

EXHIBIT A

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

FIRSTENERGY SERVICE COMPANY,)	CASE NO:
76 South Main Street)	
Akron, Ohio 44308)	JUDGE
)	
Plaintiff,)	<u>COMPLAINT</u>
)	Breach of Contract;
vs.)	Indemnification
)	
SPRING CREEK ACQUISITIONS, LLC)	
24118 County Road 1240)	<u>JURY DEMAND ENDORSED HEREON</u>
Gracemont, Oklahoma 73042-9419)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff FirstEnergy Service Company (“FirstEnergy”), for its complaint against Defendant Spring Creek Acquisitions, LLC (“Spring Creek”) alleges as follows:

THE PARTIES AND JURISDICTION

1. Plaintiff FirstEnergy is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at 76 South Main Street, Akron, Ohio 44308.
2. Upon information and belief, Spring Creek is a limited liability company organized and existing under the laws of the Oklahoma, with its principal place of business at 24118 County Road 1240, Gracemont, Oklahoma 73042-9419.
3. Spring Creek is amenable to service of process by this Court pursuant to Ohio Rules of Civil Procedure 4.1 and 4.3, and this Court may exercise jurisdiction over them pursuant to Article XXV of a written contract by and between FirstEnergy and Spring Creek, identified as Purchase Order, Contract Number 46102601 dated July 20, 2014 (the “Contract”), a true and accurate copy of which is attached as **Exhibit A** hereto.

4. Venue in this Court is proper pursuant to Ohio Rules of Civil Procedure 3(C)(3), 3(C)(6), and the Contract at Article XXV.

ALLEGATIONS COMMON TO EACH COUNT

5. FirstEnergy incorporates by reference as if fully restated the allegations contained in paragraphs 1 through 4.

6. FirstEnergy and Spring Creek entered into the Contract on or about July 20, 2014. Pursuant to the Contract, Spring Creek agreed to provide engineering services for a Transmission Reliability Excellence Plan (“TREP”) program being undertaken by FirstEnergy and certain of its affiliates.

7. Article I of the Contract defines “Purchaser” as “FirstEnergy Service Company, its successors and assigns, for itself and/or as an authorized agent of the affiliate company or companies and their respective successors and assigns, set forth in the Agreement for which the Work shall be performed... ‘Purchaser’ is FirstEnergy Service Company on its own behalf and on behalf of its affiliates.” (Exhibit A, Article I, E at p. 3).

8. FirstEnergy is a subsidiary of FirstEnergy Corp.

9. Article IX of the Contract provides that Spring Creek shall:

indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the “Indemnified Parties”), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys’ and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Contractor’s obligations under this Article IX) (collectively, “Losses”), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of or in any way related to the Work performed or to be performed, the presence of Contractor and/or its Subcontractors at Purchaser’s Site, and/or the actions or omissions of Contractor and/or its Subcontractors, including, without limitation, Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person, including, without

limitation, any person employed by Purchaser, by Contractor, or by any Subcontractor; (2) damage to or loss of use of property of Purchaser, Contractor, any Subcontractor, or any third party; (3) any contractual liability owed by Purchaser to a third party; **(4) any breach of or inaccuracy in the covenants, representations, and warranties made by Contractor under the Agreement; and/or (5) any violation by Contractor or any Subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority;** provided, however, that Contractor's indemnity obligations under this Article IX(A) shall not apply to any Losses to the extent such Losses are found to have been initiated or proximately caused by or resulting from the negligence or willful misconduct of any of the Indemnified Parties.

(Exhibit A, Article IX, A at p. 15)(emphasis added).

10. Article XV of the Contract provides, “[d]uring the performance of the Agreement, [Spring Creek] shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.” (Exhibit A, Article XV, A at p. 20).

11. Article XVIII of the Contract provides:

A. Contractor may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, without the prior written consent of Purchaser, which may be withheld at purchaser’s sole discretion. **In the event of any assignment or delegation permitted hereunder, Contractor shall continue to be liable for the performance of its obligations hereunder.**

B. If Contractor proposes to subcontract any of the Work hereunder, it shall submit to Purchaser the name of each proposed Subcontractor(s) prior to engaging such Subcontractor, with the proposed scope of the Work to be undertaken and such information about the Subcontractor(s) as Purchaser may reasonably request. Purchaser may reject any and all Subcontractors at its absolute discretion. **Contractor shall not be relieved of any responsibility or obligations under the Agreement by subcontracting any portion of the Work, whether or not such proposed subcontract is approved by Purchaser.**

(Exhibit A, Article XVIII at pp. 22-23)(emphasis added)

12. On or about May 16, 2016, Spring Creek entered into a Sub-Contractor Agreement (the “Subcontract”) with Linda S. Ewing (“Ewing”) to provide services on behalf of

Spring Creek in furtherance of Spring Creek's obligations under the Contract. A copy of the Subcontract is attached hereto and incorporated herein as **Exhibit B**.

13. On December 14, 2017, Ewing, individually and purportedly on behalf of all others similarly situated (collectively, the "Wage and Hour Plaintiffs"), filed an action against FirstEnergy Corp. in the United States District Court for the Western District of Pennsylvania, Pittsburgh Division, Case Number 2:17-cv-01573 (the "Pennsylvania Lawsuit") alleging that FirstEnergy Corp. failed to pay the Wage and Hour Plaintiffs overtime wages under the Ohio Minimum Fair Wage Standards Act, the Ohio Prompt Pay Act, the Pennsylvania Minimum Wage Act, and the Fair Labor Standards Act.

14. FirstEnergy provided timely notice to Spring Creek of the Pennsylvania Lawsuit and a demand for defense and indemnification under the Contract.

15. As reflected in a January 11, 2018 letter sent by its attorney David D. Duncan, Spring Creek rejected FirstEnergy's demand for defense and indemnification in the Pennsylvania Lawsuit. A true and accurate copy of Attorney Duncan's January 11, 2018 letter is attached hereto and incorporated herein as **Exhibit C**.

16. FirstEnergy incurred attorneys' fees, costs, and other expenses in defense of the Pennsylvania Lawsuit to protect its own interests, and those of FirstEnergy Corp.

17. FirstEnergy tried to end the case expeditiously by filing a Motion to Dismiss, which was denied by the court therein to allow plaintiff to conduct discovery. Throughout the ensuing litigation, plaintiff would not agree, actually or in effect, to settle the case.

18. In May 2020, FirstEnergy again entered into negotiations with Ewing to resolve her individual claims. During these negotiations, counsel for FirstEnergy contacted counsel for Spring Creek to notify Spring Creek of the negotiations, to remind Spring Creek of its indemnity

obligations, and to offer Spring Creek an opportunity to participate in the negotiations and honor its contractual indemnification obligations. Spring Creek, through its counsel, declined to participate or otherwise honor its obligations under the Contract.

19. On May 27, 2020, FirstEnergy sent to counsel for Spring Creek a final demand for defense and indemnification and notice that FirstEnergy intended to settle with Ms. Ewing and to obtain a dismissal of the Pennsylvania Lawsuit.

20. On June 2, 2020, FirstEnergy and Ms. Ewing entered into a Settlement Agreement and Release resolving the Pennsylvania Lawsuit.

FIRST CAUSE OF ACTION
(Breach of Contract)

21. FirstEnergy incorporates by reference as if fully restated the allegations contained in paragraphs 1 through 20.

22. The Contract is valid and enforceable.

23. FirstEnergy has performed all of its obligations under the Contract.

24. Spring Creek failed to fulfill its contractual obligations and duties to FirstEnergy including, but not limited to, its obligation to “strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.” (Exhibit A, Article XV, A at p. 20).

25. Spring Creek had, and currently has, a duty to indemnify, defend, and hold FirstEnergy harmless against all claims asserted in the Pennsylvania Lawsuit.

26. Spring Creek failed to fulfill its contractual obligations and duties to FirstEnergy by failing to, “indemnify, defend, and hold harmless [FirstEnergy], its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees...from and against any and all losses, costs, damages, claims, liabilities, fines,

penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against [FirstEnergy]...which [FirstEnergy] may suffer or incur in whole or in part arising out of or in any way related to the Work performed or to be performed, the presence of Contractor and/or its Subcontractors at [FirstEnergy's] Site, and/or the actions or omissions of Contractor and/or its Subcontractors, including, without limitation, Losses relating to...(4) any breach of or inaccuracy in the covenants, representations, and warranties made by Contractor under the Agreement; and/or (5) any violation by Contractor or any Subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority..." (Exhibit A, Article IX, A at p. 15).

27. Spring Creek failed to fulfill its contractual obligations and duties to FirstEnergy by refusing to indemnify FirstEnergy for, "any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim" which FirstEnergy has sustained on account of the Pennsylvania Lawsuit.

28. FirstEnergy gave Spring Creek proper and timely notice of the settlement of the Pennsylvania Lawsuit.

29. FirstEnergy was legally liable to respond to the settled claim.

30. The settlement between First Energy and Ms. Ewing was fair and reasonable.

31. As a direct and proximate result of the actions of Spring Creek, FirstEnergy has suffered damages in excess of \$25,000, with the exact amount to be proven at trial.

SECOND CAUSE OF ACTION
(Indemnification)

32. FirstEnergy incorporates by reference as if fully restated the allegations contained in paragraphs 1 through 31.

33. Ewing was a subcontractor to Spring Creek under the Subcontract.

34. Ewing's compensation for performing work under the Subcontract that was the subject of the Pennsylvania Lawsuit was the primary responsibility of Spring Creek.

35. Any alleged failure to pay Ewing compensation in connection with her performance of work under the Subcontract was the primary liability of Spring Creek.

36. FirstEnergy gave Spring Creek proper and timely notice of, and an opportunity to participate in, the lawsuit, settlement negotiation, and the ultimate settlement of the Pennsylvania Lawsuit.

37. FirstEnergy was legally liable to respond to the settled claim.

38. The settlement between First Energy and Ms. Ewing was fair and reasonable.

39. As a direct and proximate result of the actions of Spring Creek, FirstEnergy has suffered damages in excess of \$25,000, with the exact amount to be proven at trial.

PRAYER

WHEREFORE, Plaintiff FirstEnergy Service Company respectfully requests that this Court enter judgment in its favor, and against Spring Creek Acquisitions, LLC, as follows:

1. For Spring Creek to indemnify FirstEnergy for any and all damages, costs, attorneys' fees, settlement payments, and expenses incurred by FirstEnergy in the Pennsylvania Lawsuit;

2. For damages in excess of \$25,000 plus interest thereon, to be specifically proven at trial, on the First Cause of Action (Breach of Contract);

3. For damages in excess of \$25,000 plus interest thereon, to be specifically proven at trial, on the Second Cause of Action (Indemnification);
4. For general damages in an amount to be determined at trial;
5. For special damages in an amount to be determined at trial;
6. For reasonable attorneys' fees, pre- and post-judgment interest, related expenses, and costs incurred; and
7. For such other and further legal and equitable relief in favor of FirstEnergy, and against Spring Creek, as this Court deems just and proper.

Respectfully submitted,

/s/ Nicholas P. Capotosto
P. Wesley Lambert (0076961)
Nicholas P. Capotosto (0076436)
BROUSE MCDOWELL, LPA
388 South Main Street, Suite 500
Akron, Ohio 44311-4407
(330) 535-5711
wlambert@brouse.com
ncapotosto@brouse.com

*Attorneys for Plaintiff
FirstEnergy Service Company*

JURY DEMAND

Plaintiff FirstEnergy Service Company demands a trial by jury on all matters to which it is entitled to a jury trial.

/s/ Nicholas P. Capotosto
P. Wesley Lambert (0076961)
Nicholas P. Capotosto (0076436)

[1096077]



SPRING CREEK ACQUISITIONS LLC
24118 COUNTY ROAD 1240
GRACEMONT OK 73042-9419

Your number with us
210049180

Purchase Order

Contract number/date
46102601 / 07/20/2014
Contact person/Telephone
Justin Bahil/330-252-6396
Contact person Email
jbahil@firstenergycorp.com

Our fax number
330-245-5337

Valid from:
07/20/2014
Valid to :
12/31/2017

Freight Charges & FOB Terms: No freight, FOB destination
Terms of payt.: within 10 days 2 % cash discount Currency USD
within 45 days Due net

Target value

"Purchaser" is FirstEnergy Service Company on its own behalf and on behalf of its affiliates. The ship-to address may name either the Purchaser as named above and/or a subsidiary or affiliate company of the Purchaser. If more than one company is identified as the purchaser, the liability of each company named shall be several and not joint and shall be limited to such company's interest as identified therein.

CRITICAL INFORMATION: This contract is for the TREP program

Attention: Shawn Winchester 580-515-5050

Brief Description: Engineering Services

EXHIBIT A

The contract period of performance shall be from 7-22-2014 12-31-2017

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Invoicing:

Questions about invoices or payments or electronic payment/presentation may be directed to the Accounts Payable help desk at (814)539-3200.

Please submit invoices electronically at FirstEnergy's third party provider for electronic payment:

<https://www.xign.net>

Invoices must include pricing detail and must show the Purchase Order number, respective Purchase Order line item number, the transaction date, price data, taxpayer identification number, and the name of the FirstEnergy representative receiving the material or service. Each invoice must be sufficiently detailed to give the reviewer an accurate assessment of all the work performed by contractor.

Scope of Work:

Exhibit 2

SUBCONSULTANT'S Scope of Services

The Scope of Services for this Agreement includes furnishing any and all supervision, labor, material, equipment, tools, utilities, facilities, and services necessary, inherent, or incidental to perform the Services as summarized below and in accordance with the Drawings, Specifications, Schedule of Services, and other Contract Documents included and referenced herein and in each applicable Task Order.

"Environmental Compliance Inspections

"Right-of-Way and/or Real Estate Services

"Community outreach

"Courthouse research related to landowner verification

"Assist with review of title reports, appraisals, survey documents, etc.

"Assist with preparation of easement agreements and other related documents

"Negotiate easements, access, and other related agreements with landowners

"Construction coordination.

Exhibit 3

Compensation

Lead Agent / Supervisor Per Day \$520.00

Sr. Agent Per Day \$475.00

Acquisition Agent Per Day \$400.00

Per Diem (includes food and lodging) Per Day \$123.00

Phone Allowance Per Month \$75.00

Mileage Per Mile \$0.56*

Reimbursable Expenses, - Ink cartridges, paper, envelopes, etc. Per Month

Reimbursed with Receipt including 2% markup.

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*current GSA mileage rate

Item	FE Material No.	Tgt. qty.	Unit	Price per unit	Net value
1	00001	0	EA	As Needed Services	1.00

Work Performed

All work shall be performed in accordance with the following:

FIRSTENERGY SERVICE COMPANY - GENERAL TERMS AND CONDITIONS
FOR PURCHASE OF LABOR SERVICES

ARTICLE I - DEFINITIONS

The following capitalized terms, when used in the Agreement, shall have the meanings given below unless in any particular instance the context clearly indicates otherwise:

A. "Contractor" means the person, organization or entity furnishing and/or performing the Work.

B. "Contractor's Superintendent" means Contractor's designated authorized field representative responsible for the supervision of the Work and in all matters relating to the Agreement.

C. "Data" means the material that includes documentation, manuals, maps, plans, schedules, programs, Specifications, software, reports, drawings, designs and other relevant information.

D. "Purchase Order" is the commercial cover sheet to these terms and conditions. It may contain commercial terms and standard messages unique to this transaction.

E. "Purchaser" means FirstEnergy Service Company, its successors and assigns, for itself and/or as an authorized agent of the affiliate company or companies and their respective successors and assigns, set forth in the Agreement for which the Work shall be performed. If more than one company is identified as the Purchaser, the liability of each company named shall be several and not joint and shall be limited to such company's interest in the Agreement.

F. "Purchaser's Site" includes generating stations, steam plants, substations, transmission and distribution lines, towers, poles, buildings, or other locations owned or leased by Purchaser, for which the Work is intended to benefit, to which the Work is to be delivered or where the Work is to be carried out (if it is not to be performed at the facility of Contractor or others).

G. "Purchaser's Superintendent" means Purchaser's authorized field representative assigned to this project so designated in writing by Purchaser.

H. "Specifications" means the portion of the Agreement that describes the products and services to be delivered by Contractor under the Agreement,

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including without limitations, dimensions, components, attachments, technical and non-technical requirements and characteristics, standards, performance requirements, and tolerances. Should any conflict occur between the Specifications and any other provision of the Agreement, the Specifications shall take precedence only when and to the extent that such does not result in any way in the dilution or diminution of the rights or benefits of the Purchaser under the Agreement.

I. "Subcontractor" means any person or entity having a contract with Contractor or its subcontractors for the performance of any part of the Work.

J. "Work" means all goods, services, labor, materials, equipment, Data, and other obligations covered by or intended for Contractor to perform or supply under the Agreement, together with miscellaneous expendable job supplies, installation related equipment and/or tools, transportation, facilities and/or services for the complete execution of the Agreement.

ARTICLE II - TERMS OF AGREEMENT

A. Agreement. The terms and conditions set forth in this document, together with the Purchase Order and all attachments, exhibits, revisions, and supplements thereof, shall constitute the complete and entire agreement between Purchaser and Contractor (the "Agreement"). In case of any error, inconsistency or omission in the various documents of the Agreement, the matter will be submitted immediately to Purchaser, without whose decision said discrepancy shall not be adjusted by Contractor.

B. Offer and Acceptance. Contractor's acknowledgement, commencement of performance, or any conduct which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Contractor of the Agreement and all of its terms and conditions. Acceptance of the Agreement is expressly limited to Contractor's assent to all of the terms and conditions of the Agreement. Additional or different terms provided in Contractor's acceptance of Purchaser's offer which vary in any degree from any of the terms herein or the Agreement shall be deemed material and are hereby objected to and rejected. If the Agreement shall be deemed an acceptance by Purchaser in response to an offer by Contractor and if any terms herein are additional to or different from any terms of such offer, then the issuance of the Agreement by Purchaser shall constitute an acceptance expressly conditioned upon Contractor's assent to all of the terms and conditions of the Agreement. Additional or different terms in any acknowledgement, invoice, or communication submitted by Contractor, or any attempt by Contractor to vary in any degree any of the terms of the Agreement, unless expressly agreed to by Purchaser, shall be deemed material and are hereby objected to and rejected. Any such terms proposed by Contractor, whether by offer or acceptance, shall be void unless expressly agreed to in writing by Purchaser.

C. Integration; Modification. The parties intend the Agreement to constitute the complete, exclusive and fully integrated statement of their agreement concerning the subject matter hereof. As such, the Agreement is the sole repository of their agreement and the parties are not bound by any other agreements of whatsoever kind or nature. The parties further intend that this complete, exclusive and fully integrated statement of their agreement may not be supplemented or interpreted by any evidence of trade usage or course of dealing. No amendment, modification, or rescission of the Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification, or rescission are sought to be enforced.

D. Non-Exclusivity. The Agreement is not exclusive, and Purchaser may at its sole discretion contract with others to perform such work as is herein

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contemplated, or may perform such work with its own forces.

ARTICLE III - CONTRACTOR'S PERSONNEL

A. Relationship of the Parties. In performing the Work, Contractor shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Purchaser. As an independent contractor, Contractor shall determine the means and methods for performing the Work satisfactorily, and shall have full responsibility for complying with the Agreement. Any involvement and coordination of project activities by Purchaser shall not be construed to relieve Contractor of any responsibility for the Work. Nothing in the Agreement or in the performance of the Work shall be construed to create a partnership, joint venture or other joint business arrangement between Purchaser and Contractor.

B. Employees. Contractor represents that it will employ for the Work only persons known by Contractor to be experienced, qualified, reliable and trustworthy. At Purchaser's request, the credentials of any of Contractor's employees assigned to perform the Work shall be submitted to Purchaser in advance of such assignment. Contractor shall require and ensure that all persons performing the Work at Purchaser's Site are trained in and comply with Contractor's policies, procedures and directives applicable to activities at Purchaser's Site, including security, environmental protection, worker health and safety, sexual harassment, access, use of controlled substances, and similar activities, such policies, procedures and directives to be no less rigorous than those of Purchaser. During the performance of the Work, Purchaser may object to any Contractor employee who, in Purchaser's opinion, does not meet these criteria. In such case, Contractor shall, at its expense and risk, immediately replace or remove such employee.

C. Supervision. Contractor and its Subcontractors shall be responsible for enforcing strict discipline and good order among their employees, and shall assume full responsibility for their employees' acts and omissions (negligent or otherwise) in and around Purchaser's Site. Contractor shall enforce all environmental protection and worker health and safety and similar requirements applicable to Contractor's Work. Contractor represents and warrants that Contractor's Superintendent shall be thoroughly competent and experienced in the line of work to be performed and such individual shall represent Contractor on the job and all communications given him by Purchaser shall bind Contractor.

D. Background Checks. Contractor shall make best efforts to ensure that Contractor's employees assigned to the Work do not have criminal records and are not involved in criminal activity which could create a risk to Purchaser's Site, customers, and/or employees. Upon actual knowledge of a criminal record or involvement in criminal activity, Contractor shall immediately remove said employee or employees from the Work. Purchaser, at any time prior to the start of or during the Work, may request Contractor to (1) verify that its employee or employees do not possess a criminal record, and (2) certify that its employee or employees completed the training to achieve the NERC CRITICAL INFRASTRUCTURE PROTECTION ("CIP") certification. The training to achieve the NERC CIP certification shall be provided by Purchaser if required, and shall be completed at Purchaser's expense. Upon completion of such training, Contractor shall provide certification pursuant to a NERC CIP compliant documented personnel risk assessment and training program that each of Contractor's employees, who are authorized as part of the Work to have electronic or unescorted physical access to Critical Cyber Assets (as the same are identified by Purchaser from time to time): (i) have submitted to a background check consisting of at a minimum an identity verification (e.g., Social Security Number verification in the U.S.) and a

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seven (7) year criminal check within the past seven years whereby no evidence of a criminal record or criminal activity was discovered; or (ii) have been subject to a seven-year cycle re-check of the background check; and (iii) have received the Purchaser-sponsored Security Awareness training or will receive such training prior to accessing Critical Cyber Assets. These requirements are subject to audit and certification by Contractor upon request by Purchaser. Contractor shall inform Purchaser immediately, but no greater than within two (2) hours, via email and phone call, if a Contractor's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is terminated for cause. Further, Contractor shall inform Purchaser within forty-eight (48) hours, via email and phone call, if a Contractor's employee having authorized cyber or authorized unescorted physical access to Critical Cyber Assets is voluntarily terminated; is transferred to a position where they no longer require access to the Purchaser's CIP assets; or when the access rights of a Contractor's employee to Critical Cyber Assets needs to be changed or removed.

E. Substance Abuse. Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace, as well as Purchaser's rules and regulations governing the same, available upon request. Contractor is responsible for ensuring that all Contractor's employees and Subcontractors, while working on Purchaser's property, will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

F. Gifts and Gratuities/Conflicts of Interest. Purchaser's employees are subject to conflicts of interest and gifts and gratuities policies, which generally prohibit such employees and/or their family members from giving or receiving gifts, favors, services, or privileges (including travel and entertainment, and discounts that would not be available to the general public) from existing or potential customers, suppliers, or contractors that are more than a nominal value, or that exceed the level of standard business courtesies, and the acceptance of cash, gift certificates, or loans in any amount. The conflicts of interest policy generally prohibits Purchaser's employees and/or their family members from serving as an officer, director, employee, consultant, agent, of, or owning any beneficial interest in, an organization which has a business relationship with FirstEnergy as a supplier or contractor, if the employee is in a position to influence decisions concerning the relationship. The entire text of these policies may be found within the Supply Chain Section at www.firstenergycorp.com. Suppliers and prospective suppliers to Purchaser are expected to be aware of and comply with these policies in their dealings with FirstEnergy employees and their family members. Any suspected or actual violations of these policies should be reported; and, may be reported anonymously and confidentially by a customer, supplier, contractor, or employee by calling the Employee Concerns Line (1-800-683-3625), 24 hours a day, 7 days a week.

ARTICLE IV - SCOPE AND PERFORMANCE OF WORK

A. Performance Criteria. Contractor shall perform the Work in accordance with good practices which are standard in the industry and all Work shall be of the highest quality and workmanship. Contractor shall cooperate, consult and coordinate with Purchaser in the performance of the Work, and shall provide such Work in a timely manner consistent with Purchaser's schedule and in strict compliance with the Agreement and all applicable laws, codes, and regulatory requirements of governmental authorities.

B. Furnishing. Contractor shall furnish all permanent materials and equipment specified in the Agreement, labor, supervision, installation related equipment and/or tools, miscellaneous expendable job supplies,

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facilities, services and transportation necessary for the successful completion of the Work. Contractor will be responsible to perform all survey and layout work required for the Work which shall be to exact lines and grades and for any damages to or additional cost for the work of any other contractor caused by its inaccuracy. Upon request, Purchaser's Superintendent will give Contractor the location of reference base lines and bench marks.

C. Contractor agrees to supply an adequate administrative and supervisory force, a sufficient complement of properly skilled workmen, adequate construction equipment, tools and materials, and shall prosecute the Work expeditiously and efficiently in accordance with the agreed upon Work schedule. If Contractor fails to perform any or all of the aforementioned duties, then Purchaser may, without prejudice to any other of its rights or remedies as set forth in Article XII, and by written notice to Contractor, direct Contractor to increase or supplement its working force and equipment and/or perform the Work on an overtime or multiple shift basis without added cost to Purchaser and to such an extent as to give reasonable assurance of compliance with the schedule of completion and the required quality of work.

D. Access to Work. Purchaser shall be afforded unobstructed access to Contractor's or any of its Subcontractor's Work, facilities and records, for the purpose of observing and reviewing Work completion and quality, as well as contract cost and quality records. Any such observation or review or the failure by Purchaser to so perform such observation or review, shall in no manner reduce the responsibility and liability of Contractor or its Subcontractors or excuse them from performance. Access to a Subcontractor's facilities and records will be coordinated through Contractor.

E. Work Schedule. Contractor shall, prior to the start of the Work and as specified in the Work, provide to Purchaser a schedule providing sufficient details to fully describe its plan of operation for the Work and all testing and deliverables of Contractor hereunder.

F. Audit, Records and Reports. (1) Contractor shall keep accurate and complete records and books of account showing: (a) all charges, disbursements or expenses made or incurred by it in performing the Work; and (b) compliance with laws regulating employee benefits, quality assurance, environmental and safety activities. Upon request, Contractor shall provide Purchaser with sufficient information relating to prices of materials and services to enable Purchaser to comply with accounting regulations of the Federal Energy Regulatory Commission (FERC). Contractor shall retain the records in electronic format and shall preserve all such records and books of account for three (3) years after completion of the Work, or longer if required by law or if required to resolve a dispute. All such books of account and records shall be open at all reasonable times (before and after the Work is completed) for inspection and audit by Purchaser or its authorized representative without additional cost to Purchaser, and Purchaser shall have the right, upon reasonable prior notice, to audit at any time up to three (3) years after the completion of the Work, the costs, expenses and disbursements made or incurred in connection with the Work. Access to books and records is limited to those required to verify the accuracy of amounts billed, including but not limited to, expense statements and reimbursements to employees, including canceled checks etc. to verify travel expenses. Contractor shall promptly reimburse to Purchaser any improper charges identified in any such audit. Should the audit reveal a material failure to keep complete and accurate records or material inaccuracies, the Purchaser may, in addition to the forgoing remedies, charge the Contractor for the Purchaser's full costs of performing the audit. (2) Contractor shall maintain books, records, documents and other

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information sufficient to determine the status of Contractor's performance and compliance with the requirements of the Agreement. If required by Purchaser, Contractor shall submit a monthly report to Purchaser, within seven (7) calendar days of such request and in such form as shall be specified by Purchaser, showing the progress made by Contractor toward completion of the Work up to the date of each report, the schedule status, cost data and other matters pertaining to the Work. Each monthly report shall include an updated project schedule, a list of Contractor's employees performing the Work, and a discussion of Contractor's planned activities for the next month. Contractor shall continuously monitor, control, report, and forecast the progress of the Work in accordance with the project schedule. Contractor shall provide increasing scheduling detail as the Work progresses. Contractor's reporting shall be sufficiently detailed to present to Purchaser an accurate status of the Work's project schedule, variances from the project schedule with reasons therefor, and any planned corrective action.

G. Testing and Inspections. Work shall not be deemed complete until all tests and inspections required, if any, have been satisfactorily performed and completed and accepted in writing by Purchaser.

H. Hazard Communication. If applicable, Contractor specifically agrees to comply with all hazard communication standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et. seq., the Pennsylvania Right To Know Act and similar hazard communication laws of other states, as amended from time to time, including, but not limited to, evaluating and labeling all hazardous chemicals as defined by said standards, and maintaining Material Safety Data Sheets on all such hazardous chemicals to insure that hazard information with regard to chemical hazards produced, imported, or used within the workplace is transmitted to affected employees of Contractor, its Subcontractor(s) and Purchaser. All products and materials brought on site by Contractor must be removed by Contractor upon its departure.

I. Overtime. No regularly scheduled overtime work, or work on Saturdays, Sundays or legal holidays shall be performed without written approval of Purchaser's Superintendent, except that such work as may be necessary in case of emergencies or for the proper care, maintenance and protection of equipment or finished Work may be performed without Purchaser's approval at Contractor's expense and without additional cost to Purchaser.

J. Uncovering of Work. If any Work should be covered contrary to the request of Purchaser, it must, if required by Purchaser, be uncovered for its observation and replaced, at Contractor's expense. If any other Work has been covered which Purchaser has not specifically requested to observe prior to being covered, Purchaser may request to see such Work and it shall be uncovered by Contractor. If such Work is found to be in accordance with the Agreement, the cost of uncovering and replacement shall, by appropriate change order, be charged to Purchaser. If such Work is found not to be in accordance with the Agreement, Contractor shall pay such costs.

ARTICLE V - CONTRACT PRICE AND PAYMENT

A. Net Pricing. Contractor has visited the site of the Work, examined the Specifications, drawings, and the Agreement, and is familiar with the conditions in the area which would affect the performance of the Work and the terms of employment. The lump sum or unit prices for the Work are firm for all labor, professional services, expendable materials, permanent equipment and materials as specified in the Agreement, as well as for supervision (including Contractor's Superintendent and timekeeper), miscellaneous job supplies, installation related equipment and/or tools (both rented and non-rented), field and office overhead, transportation,

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facilities, services, Contractor's profit and any other of Contractor's costs, including all overhead. Unless otherwise set forth herein, no charge will be allowed for boxing, packing, crating, or carting, or any other additional charges in excess of the prices stated hereunder. All amounts referenced herein are in United States Dollars. Except to the extent otherwise provided herein, Contractor shall pay all taxes, duties, levies, and all other fees and charges imposed by any governmental entity with respect to the Agreement and the materials, equipment, and services provided hereunder. Price or prices quoted by Contractor shall include all contributions for unemployment compensation, workers' compensation, social security, and other employee benefits, and for the cost of any insurance required by the Agreement. Purchaser will not be responsible to pay for charges for any Work performed for any other contractor, Subcontractor, manufacturer, or Material Supplier, but shall be responsible only to make payment as provided by the Agreement to Contractor.

B. Invoicing.

1. Invoices shall be submitted to the address specified in the Agreement, except that invoices submitted electronically will have additional requirements. The elements of all amounts invoiced shall be shown separately, by applicable line items, and shall be classified or further broken down as Purchaser may require for accounting and payment purposes. Any taxes which are payable by Purchaser hereunder shall be shown separately on any bids and invoices sent to Purchaser. Any disputed invoice or portion thereof need not be paid, but in such case, Purchaser shall promptly notify Contractor of any rejected invoice or portion thereof with reasons for such rejection. Any invoice shall be submitted upon completion of the Work, or as otherwise mutually agreed on the face of the Agreement. Contractor shall forward to Purchaser, with the invoice, original and duplicate bills of lading or express receipts, signed by the carrier, for materials and/or equipment shipped by Carrier other than Purchaser's preferred carrier.

2. Invoice Charges. Invoice charges shall be allocated to appropriate accounts, a list of which will be furnished by Purchaser. For time and material Work performed by Contractor under Article XIII of the Agreement, the charges will be listed by Purchaser's Change Order documentation number [Field Change Request (FCR) Numbers, Maintenance Work Order (MWO) Numbers, Extra Work Request (EWR) Numbers, Contracted Services Change Order (CSCO) Numbers, etc.] and listed by current month and shall be supported by daily time sheets, accurately describing the Work being performed, signed by Purchaser's Superintendent showing the craft, first and last names and social security number of each worker and each piece of equipment employed on the Work. All material charges shall be supported by the original invoices or other evidence as required by Purchaser to substantiate the charges submitted.

3. Electronic Invoices. Unless exempted by Purchaser, Contractor shall utilize the Purchaser's then-current Electronic Invoice Presentment and Payment program to submit invoices and receive payment electronically from Purchaser.

C. Payment. Each invoice shall, after approval by Purchaser, be processed for payment in accordance with the terms of payment as set forth in the Agreement for the amount of each approved invoice less any monies retained per the terms of payment or under Article V (E) below. Purchaser reserves the right to retain ten percent (10%) of the payments made for Work as such payments are made hereunder. The ten percent (10%) retained shall be paid to Contractor when Purchaser is satisfied that the interests of the Purchaser in the completed Work have been protected. Such payment shall not be unreasonably withheld. Unless otherwise set forth herein, payment terms

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are 2% 10 Net 45 Days. Payment dates shall be calculated from the date of receipt of invoice or acceptance of the Work by Purchaser, whichever is later. Payments by Purchaser shall not be deemed evidence of acceptance by Purchaser of the Work procured in the Agreement. In any event, the costs which are to be directly reimbursed for Work performed as directed by Purchaser shall be specified in writing and agreed upon by the parties prior to the commencement of such Work. After completion of the Agreement and final acceptance of the Work, any retained monies without interest, except those retained under Article V(E) hereof, will be paid to Contractor in accordance with the terms of payment designated in the Agreement.

D. Increases. If Contractor wishes to make a claim for an increase in the contract price or time for performance, Contractor must proceed as provided below. Any claim for an increase in the contract price or time for performance shall be based on immediate verbal notice of the occurrence of the precipitating event to Purchaser's Superintendent followed by written notice delivered to Purchaser's Superintendent within forty-eight (48) hours of the occurrence of the event giving rise to the claim. Notice of the amount of the claim and the work schedule adjustment with detailed supporting data shall be provided within seven (7) calendar days of such occurrence, and if earlier, two (2) hours minimum prior to the time Purchaser needs to make a Work/schedule adjustment, unless Purchaser's Superintendent allows an additional period of time to ascertain accurate cost or schedule data. Payment for such claims for increase shall be mutually agreed upon between Purchaser and Contractor and approved by Purchaser's Superintendent. Contractor shall not be entitled to make a claim for an increase in the contract price if Purchaser determines that the claim is for goods and services that are within the scope of the Work hereunder, or that the claim is for goods or services that are necessitated by the errors, acts, or omissions of Contractor.

E. Withholding.

1. If Purchaser has a claim under the Agreement, regardless of when it is discovered, including a claim that: (1) Contractor's invoice is erroneous; (2) the Work is deficient, defective or incomplete; (3) a third party claim has been asserted or there is reasonable evidence indicating the possibility of such a claim; (4) Contractor fails to make a payment as and when due to a Subcontractor or supplier for materials, labor or equipment; (5) Purchaser, another contractor, subcontractor, or other party suffers damage or injury which is attributable to Contractor; or (6) Contractor has failed to supply any affidavit, release or waiver of lien which Purchaser may require pursuant to law; then Purchaser may withhold payment of, or set off the amount of its claim, costs or loss against, any amount invoiced by Contractor. If any monies are so withheld, they shall be paid only when, without cost to Purchaser, the cause of such withholding has been eliminated to the satisfaction of Purchaser. Moreover, if any monies are so withheld, Purchaser shall not be responsible for any interest payment to Contractor.

2. New Jersey Withholding If applicable, in accordance with New Jersey law, Purchaser shall withhold a portion of payments made to Contractor for services to construct, improve, alter, or repair a building, structure, or improvement to real property unless Contractor provides written documentation that Contractor is a corporation or registered with the State of New Jersey.

ARTICLE VI - CONSTRUCTION PLANT, FACILITIES AND OPERATIONS

A. On-Site Facilities. Unless otherwise specified, Contractor shall construct, maintain and remove (in conformity with local and state regulations) all temporary buildings, structures, construction plant, change houses, portable lavatories and temporary storage buildings required for its

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own use or that of its Subcontractors, if any. The location of such buildings, storage areas for materials and employees' parking space, if on Purchaser's Site, will be designated by Purchaser and shall be removed at Contractor's expense upon completion of the Work. If the Agreement specifies that Purchaser will provide (at a location of its choice within reasonable distance of the Work area) the water and power source required for performance of the Work, or allows Contractor or its Subcontractors to use any facility, equipment or apparatus owned or leased by Purchaser, Contractor shall accept the same services at its own risk. If Purchaser does not provide any such items, Contractor shall be responsible for providing the water and power sources necessary for the performance of the Work. When any use is to be made by Contractor or its Subcontractors or by their respective employees of any equipment, facilities, office space or apparatus (including but not limited to scaffolds, ladders, cranes, derricks, platforms, runways, bridges, floor, tools, barricades, or other facilities) which are owned, rented or leased by Purchaser or Purchaser's contractor(s), or contracted for from other contractors, Contractor shall prior to and during such use satisfy itself as to the safety of such facilities; and Contractor hereby assumes the entire responsibility and liability for all injuries, claims, damages, or losses whatsoever resulting from the use of such equipment, facilities, or apparatus. Contractor agrees to execute all necessary documents required by Purchaser or Purchaser's other contractors, to acknowledge inspection of such equipment or apparatus prior to use.

B. Areas of Work and Non-Interference with Other Activities on Site.

Contractor shall use only the designated construction site for its Work, and shall not use any other area of Purchaser's Site for any purpose without the prior approval of Purchaser. If any part of the Work is to be performed on an easement or right-of-way held by Purchaser, Contractor shall limit its activities to that area and not allow its employees or Subcontractors outside such area. The area(s) designated by Purchaser as the construction site shall be under the control of Contractor unless otherwise agreed by Contractor and Purchaser. Contractor shall secure the designated construction site and shall provide barriers and warning appropriate for the safety and protection of its workers and other persons present at the construction site. Contractor shall direct its employees or employees of its Subcontractors to enter and leave the premises only through access ways, and to park only in parking areas designated by Purchaser's Superintendent.

Contractor shall so conduct the Work so as to avoid any necessity to curtail the operations of Purchaser's Site. Where the Work requires connection to or modification of existing facilities, Purchaser will arrange for Contractor to perform such Work at Purchaser's convenience and Contractor shall at all times, except when required to install such facilities, keep its employees and cause its Subcontractors to keep their employees out of, off of, and out of contact with Purchaser's Site and facilities. Contractor shall conduct its Work so as to minimize interference with other work in progress. In case of dispute between Contractor and other contractors engaged by Purchaser, the decision of Purchaser's Superintendent coordinating the work shall be final. Contractor shall not permit its employees or the employees of any of its Subcontractors to operate the existing Purchaser's Site or any of its facilities or to perform maintenance work on the existing Purchaser's Site or any of its facilities, except such maintenance work as is necessary to perform the Work.

C. Responsibility for Materials and Work Prior to Acceptance. Contractor shall receive, check in, unload, store, handle and protect all Work to be

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used, furnished or erected by Contractor or its Subcontractors. The personal property being used, furnished and/or erected, installed or constructed under the Agreement shall be considered to be in the care, custody and control of Contractor and Contractor shall be responsible for all Work until permanently placed, installed or constructed and accepted by Purchaser. Contractor shall satisfactorily dispose of all rubbish resulting from the operations under the Agreement on a day-to-day basis and upon completion of the Work, shall perform all work necessary to restore Purchaser's Site to at least as good order and condition as at the beginning of the Work under the Agreement.

D. Security and Safety. Contractor shall take all necessary precautions for the safety and health of its employees and Subcontractors engaged in the Work and shall comply with all rules, laws, and regulations of the United States of America, and any applicable state, political subdivision or duly constituted governmental authority, with regard to the safe performance of the Work and shall do everything necessary to prevent accidents or injury to persons on, about, or adjacent to the premises where Work is being performed, including using proper safety appliances and providing first aid treatment and ambulance service for emergency treatment of injuries. Contractor is solely responsible and accountable to ensure its personnel work safely, and Contractor management must enforce safe work practices. It is not the responsibility of Purchaser to supervise Contractor personnel. Contractor shall comply with all safety and health rules and regulations established by Purchaser for the conduct at Purchaser's Site. This requirement shall be included in all subsequent orders or subcontracts issued by Contractor. Contractor shall provide temporary fire protection facilities to the extent required by Purchaser during the construction period. Contractor may be working adjacent to or concurrent with Purchaser's operations or other construction activities. Contractor shall maintain close cooperation and flexible working arrangements with Purchaser in consideration of adjacent structures and work. Contractor shall maintain close cooperation with other contractors working at Purchaser's Site. Upon commencing Work, Contractor shall establish and maintain sanitary facilities for its employees and those of its Subcontractors, to the extent such facilities are not provided by Purchaser, which shall at all times conform to local and state regulations. Contractor will remove these facilities upon completion of the Work and clean the site to Purchaser's satisfaction. Purchaser will at its discretion provide a security guard at the entrance and exits to Purchaser's Site who shall have the right to check all persons entering and leaving Purchaser's Site, check all automobiles, cars and trucks and carry out such control of persons and vehicles as deemed necessary.

E. Sales Prohibited. Contractor is advised and agrees that the sale of anything (i.e. food, beverages, articles of clothing, etc.) on Purchaser's Site by Contractor's or Subcontractor's personnel is strictly prohibited.

F. Arrival and Departure of Contractor's Tools and Materials

1. Mobilization:

Contractor shall provide the necessary resources to receive all tools, equipment and materials needed to complete the Work that are shipped to Purchaser's Site by, or for the benefit of, Contractor or its Subcontractors. Contractor shall be responsible for providing Purchaser's Superintendent with the detailed packing lists of all such items needed to complete the Work, including tools, equipment, and materials prior to the time of any shipment of such items to Purchaser's Site. Contractor's detailed packing lists supplied to Purchaser shall distinguish between tools, equipment, and/or materials that are to be used in firm price Work

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versus those that are to be used for cost reimbursable Work (T&M Work). For T&M Work designated tools, equipment, and/or materials Contractor shall, where known, identify the specific T&M Work associated therewith and itemize such tools, equipment, and/or materials on separate forms. Contractor may use Purchaser's supplied form or Contractor's own form as long as the same minimum information contained on Purchaser's form is on Contractor's form(s).

2. Demobilization

Contractor shall provide to Purchaser proper verification of ownership of all tools, equipment, and materials being removed from Purchaser's Site at anytime. Contractor shall prepare and submit an itemized list of the tools, equipment, and materials leaving Purchaser's Site for each individual shipment. The forms shall be signed by Contractor's Superintendent signifying that everything listed on the form(s) as being removed from Purchaser's Site is the property of Contractor. Contractor shall prepare sufficient copies of the forms to provide at minimum one (1) copy for Purchaser's Superintendent and one (1) copy to be left with the security guard when leaving Purchaser's Site. Contractor shall provide at least forty-eight (48) hours notification that tools, equipment, and materials are being readied for shipment off Purchaser's Site. Contractor shall, prior to beginning to pack and load tools, equipment, and materials for shipment off Purchaser's Site, contact Purchaser's Superintendent to determine if Purchaser desires to be present to monitor the packing and loading process. Should Contractor fail to notify Purchaser's Superintendent prior to packing and loading any shipment, thus resulting in Purchaser's inability to verify the tools, equipment, and materials being shipped, all costs to redo the entire loading process from the beginning will be to Contractor's account. Purchaser retains the sole option to perform a total or partial ownership verification audit of all Contractors' shipments leaving Purchaser's Site.

ARTICLE VII - INTELLECTUAL PROPERTY RIGHTS

A. Ownership of Work and Data. The Work and all Data associated with the Work, whether or not patentable, registrable as a copyrightable work, or registrable as a trademark or service mark, shall become the property of Purchaser and Purchaser shall own any and all intellectual property rights therein (including the rights to any patent, trademark or service mark, trade secret, and copyright therein). Contractor hereby agrees that any materials and works of authorship conceived or written by Contractor during the term of the Agreement that pertain in any material respect to the Work shall be done as "work made for hire" as defined and used in the Copyright Act of 1976, 17 USC §1 et seq., and that Purchaser, as the entity for which the work is prepared, shall own all right, title and interest in and to such materials, including the entire copyright therein. To the extent that any such materials are not deemed to be a "work made for hire," Contractor will assign to Purchaser ownership of all right, title, and interest in and to such materials, including ownership of the entire copyright therein.

B. Infringement. Contractor warrants that the Work, and any part thereof, provided by Contractor hereunder is and will be original, does not and will not infringe on or misappropriate any United States or foreign patent, copyright, trademark, or other intellectual property rights of any third party, and have not previously been and will not be assigned, licensed or otherwise encumbered. If the Work or any portion thereof is held to constitute an infringement or misappropriation of the intellectual property rights of a third party, then Article IX(B) shall apply.

C. Data Furnished by Purchaser. All Data furnished by Purchaser in connection with the Work shall remain Purchaser's exclusive property. Contractor shall not use Purchaser-furnished Data for any purpose other than

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for the Work. Contractor shall: (1) sign and deliver a written itemized receipt for all Purchaser-furnished Data and shall be responsible for its safekeeping, and (2) return such Purchaser-furnished Data and all copies thereof to Purchaser upon completing the Work.

ARTICLE VIII - WARRANTY

A. Warranty. Contractor expressly warrants that all Work supplied hereunder will conform to the Agreement in all respects and will be new (unless the Agreement or Purchaser expressly permits otherwise in writing), of good workmanship and quality, free from any defects (including defects in design, to the extent such design is the responsibility of Contractor, and title). Contractor warrants that all Work performed pursuant to the Agreement shall be: (i) conducted in a manner consistent with the generally accepted level of care and skill ordinarily exercised by professionals and other persons performing work of a nature similar to that which Contractor is performing on the project; (ii) performed safely, lawfully, efficiently and properly, and otherwise in a good and workmanlike manner; (iii) in strict conformity with the requirements of the Agreement, including, without limitation, the specification; and (iv) of good workmanship and quality, free from defects (including, without limitation, defects in design, material, workmanship and title), and fit for the purposes intended by Purchaser as expressly set forth in the Agreement. Contractor further warrants that all equipment used in connection with performance of the Work shall be in safe and proper working order. Contractor acknowledges and agrees that Purchaser is relying upon Contractor's special and unique abilities and the accuracy, competence and completeness of Contractor's Work.

B. Remedies. Upon failure of any Work or any part thereof, including any goods, equipment and material, to conform to the Contractor's warranties and upon receipt by Contractor of Purchaser's written notice of such failure, Contractor shall, at no cost to Purchaser promptly repair or replace such Work or correct or re-perform such Work so that all Work provided by Contractor under the Agreement conforms to the above warranties. In addition to, and not in limitation of any other warranty, Contractor shall also repair or replace, or cause to be repaired or replaced, any equipment, components, parts and materials (whether or not Purchaser's materials or third party parts and whether or not such equipment, components, parts and materials were subject to the Work performed by Contractor hereunder) damaged as a result of an incident caused by a defect covered by Contractor's warranties under the Agreement. The cost of transporting, repairing, replacing, removing or installing material to make Work comply with Contractor's warranties shall also be borne exclusively by Contractor. Without limiting any of Purchaser's other rights, Purchaser shall have the right to an injunction requiring Contractor to correct, at Contractor's own cost and expense, any Work that fails to satisfy the foregoing warranties and such right shall remain valid for a period of two (2) years from the date of final acceptance of the Work by Purchaser. The remedies set forth in the Agreement are cumulative, and shall not preclude any other remedy available to Purchaser at law or in equity.

C. Survival. Contractor agrees that all of its warranties shall survive performance and acceptance of and payment for the Work and shall inure to the benefit of Purchaser, and to all subsequent purchasers of the Work provided hereunder.

D. Acceptance Tests. Purchaser shall be notified of and may witness any acceptance tests or inspections that are or may be agreed upon. Contractor shall not be relieved of its responsibility for performance in accordance with the Agreement by reason of Purchaser's or Contractor's conducting or witnessing tests or inspections.

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ARTICLE IX - INDEMNITY

A. Contractor's Indemnity. Contractor shall indemnify, defend, and hold harmless Purchaser, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the "Indemnified Parties"), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Contractor's obligations under this Article IX) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of or in any way related to the Work performed or to be performed, the presence of Contractor and/or its Subcontractors at Purchaser's Site, and/or the actions or omissions of Contractor and/or its Subcontractors, including, without limitation, Losses relating to: (1) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by Purchaser, by Contractor, or by any Subcontractor; (2) damage to or loss of use of property of Purchaser, Contractor, any Subcontractor, or any third party; (3) any contractual liability owed by Purchaser to a third party; (4) any breach of or inaccuracy in the covenants, representations, and warranties made by Contractor under the Agreement; and/or (5) any violation by Contractor or any Subcontractor of any ordinance, regulation, rule, or law of the United States or any political subdivision or duly constituted public authority; provided, however, that Contractor's indemnity obligations under this Article IX(A) shall not apply to any Losses to the extent such Losses are found to have been initiated or proximately caused by or resulting from the negligence or willful misconduct of any of the Indemnified Parties.

B. Intellectual Property Indemnity. Contractor shall indemnify, defend, and hold harmless the FirstEnergy Indemnified Parties from and against any and all Losses which any of the FirstEnergy Indemnified Parties may suffer or incur arising out of or related to any claim, suit, or proceeding alleging that the Work, the intended use thereof, or any materials and information designed, specified, or used by Contractor or any Subcontractor in performing the Work, violates, infringes, or misappropriates any patent rights, copyrights, trade secrets, or other intellectual property rights of any third party. If the use of any Work is enjoined or restrained, and Contractor fails to remove such injunction or restraining order within a reasonable time, Contractor shall promptly and at Contractor's expense, either (1) secure for Purchaser the right to use the Work or any portion thereof which is said to be infringing by procuring for Purchaser a royalty-free license or otherwise, or (2) replace the Work or such portion thereof with non-infringing Work that meets the requirements of the Agreement, or (3) remove such infringing Work or such portion thereof, as Purchaser may elect, and refund the sums paid therefor by Purchaser, together with any out-of-pocket costs incurred by Purchaser in connection with its purchase and use of the infringing Work, all without damage or injury to Purchaser's other property.

C. Waiver of Immunities. If an employee of Contractor or its subcontractor, or such employee's heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death to such employee, brings an action at law against any Indemnified Party, then Contractor, for itself, its successors, assigns, and subcontractors, hereby expressly waives any provision of any workers' compensation act or other similar law whereby Contractor could preclude its joinder by such Indemnified Party as an additional defendant, or avoid liability for damages, contribution, defense,

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or indemnity in any action at law, or otherwise. Contractor's obligation to Purchaser herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Contractor under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Purchaser by an employee of Contractor or anyone employed directly or indirectly by Contractor or anyone for whose acts Contractor may be liable.

D. No Impairments. Contractor's obligations under this Article IX shall not be limited to the extent of any insurance available to or provided by Contractor. Furthermore, the indemnification, defense and hold harmless of Purchaser by Contractor and any other right of Purchaser against Contractor shall not be impaired or affected in any way by the failure of Purchaser to provide Contractor with a copy of a notice to owner, notice of lien, mechanics lien, or other information.

ARTICLE X - INSURANCE

A. Contractor's Insurance. Contractor agrees to secure and maintain in force minimum policies of insurance of the types listed below and shall furnish to Purchaser, prior to starting Work and throughout the duration of the Work, certificates of insurance evidencing current coverage listed below.

1. Commercial General Liability (CGL) insurance including products-completed operations, independent contractors, and contractual liability coverages. Coverage under this policy shall have limits of liability of not less than \$2,000,000 per occurrence, combined single limit for bodily injury (including disease or death), personal injury, and property damage (including loss of use) liability.

2. Automobile Liability insurance, including non-ownership and hired car endorsement, with minimum limits of \$1,000,000 per occurrence, combined single limit.

3. Worker's Compensation coverage in the statutory amounts under the worker's compensation act(s) of the location(s) in which the Work is to be performed, for the current period.

4. Employer's Liability with a minimum limit of \$1,000,000 for each accident or illness.

Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

B. Additional Insured. FirstEnergy Corp. and its subsidiaries and affiliates shall be included by Contractor as an additional insured to Contractor's CGL and Automobile Liability policies ("Policies"), identified in the preceding paragraph, for any losses resulting from, or related to, the Contractor's sole or concurrent negligence. Said Policies shall provide primary and non-contributory coverage to the additional insured in relation to any insurance carried by Purchaser for the same losses, and shall contain a cross-liability clause providing severability of interests so that coverage will respond as if separate policies were in force for each insured. A signed copy of the endorsement adding FirstEnergy Corp. and its subsidiaries and its affiliates as an additional insured (blanket endorsement is acceptable) shall be attached to the certificate of insurance providing general liability coverage.

C. Lapse of Coverage. The insurance policies required by this Article shall not be canceled or allowed to lapse, and no change shall be made in this policy which alters, restricts or reduces the insurance provided or changes the name of the insured without first giving at least thirty (30) days' notice in writing to FirstEnergy Service Company, Insurance Risk Management, 76 South Main Street, Akron, Ohio 44308, with receipt of notice acknowledged. In the event of cancellation or lapse of or prohibited change

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in any policy for which a certificate is required to be furnished under the Agreement, Purchaser shall have the right to suspend the work of Contractor until the policy and certificates in evidence thereof are reinstated or arrangements acceptable to Purchaser are made pending issuance of new policies and certificates. If any such insurance shall be about to lapse or be canceled, Contractor shall, at least thirty (30) days before coverage thereunder ceases, obtain a new policy with like coverage, and if Contractor fails to do so, Purchaser may obtain insurance protecting it from the hazards covered by such lapsed or cancelled policy, and all premiums and expenses of such insurance shall be charged against Contractor and shall be a legitimate deduction from any sum due it from Purchaser.

D. Waiver of Subrogation. Contractor and any of its Subcontractors shall waive and hereby waives any rights of subrogation which they or any of their insurers may have against Purchaser, its affiliates, and each non-affiliated company disclosed in the Agreement, their respective agents or employees.

E. Performance Bond. Purchaser may, at any time, require Contractor to secure a performance bond with such conditions and limits as may be prescribed by Purchaser. Purchaser shall reimburse Contractor for the cost of such bond.

ARTICLE XI - PAYMENT OF ACCOUNTS; WAIVER OF LIEN RIGHTS

A. Contractor shall promptly pay all claims for labor, material, services, and other expenses incurred by it and its Subcontractors in connection with the Work.

B. Waiver of Lien Rights. To the extent permitted by law, Contractor, for itself and anyone else acting or claiming through or under it, does hereby expressly waive and relinquish all right to file a mechanics' or materialmen's lien, or notice of intention to file any lien, and agrees that no mechanics', materialmen's, or similar lien shall be filed or maintained against any property where the Work is to be performed, or any interest of Purchaser in such property, by or in the name of Contractor or any Subcontractor, materialman or laborer acting or claiming through or under Contractor for Work performed or materials furnished in connection with the Agreement. Contractor further agrees that it will defend, indemnify and hold Purchaser harmless from and against any and all loss, cost, expense (including attorneys' fees and costs of defense), liability, claim or demand arising from any mechanics', materialmen's or similar lien of Contractor or any Subcontractor, sub-subcontractor, materialman, supplier or laborer acting or claiming through or under Contractor for Work performed or materials furnished in connection with the Agreement.

C. Right to Withhold. Purchaser may require evidence satisfactory to it from Contractor that all Work in progress, Work done or delivered, or service performed, for which Purchaser has made a payment, are free and clear of mechanic's', materialmen's, and other liens, attachments, claims, demands, charges or other encumbrances. If such evidence is not promptly submitted to Purchaser, it may withhold payments due Contractor in amount sufficient to cover any potential claim or it may terminate the Agreement for default. Prior to invoicing final payment, Contractor and its Subcontractors shall sign, upon Purchaser's request, a release of liens in a form prepared by Purchaser and furnished to Contractor. Contractor shall, within thirty (30) days, cause to be discharged and terminate any mechanics' or materialmen's lien filed by any of its Subcontractors, sub-subcontractors, materialmen, laborers or suppliers, or shall bond against the same at its own cost and expense with a bond satisfactory to Purchaser.

D. Subcontracts. Every subcontract for any portion of the Work shall contain an undertaking by the Subcontractor similar in effect to this

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Article. It is intended by the parties that Contractor's agreement to waive and relinquish lien rights as above provided shall be effective only in those jurisdictions which permit such agreement to be made. The fact that some jurisdictions in which Work will be performed do not permit such waiver shall not affect the enforceability of this waiver in those jurisdictions that do permit such waivers. The above obligations of Contractor and/or its Subcontractors are supplementary to and not a substitute for rights of Purchaser, its subsidiaries and affiliates, under the provisions of the Mechanics Lien Laws of the jurisdiction in which the Work is being performed.

ARTICLE XII - DEFAULT AND TERMINATION

A. Events of Default; Termination for Cause. Contractor agrees that if:

(1) Contractor fails to comply with applicable laws and ordinances; or (2) Contractor assigns or subcontracts the Agreement or any part hereof without the consent of Purchaser; or (3) Contractor otherwise fails or refuses to perform its obligations under the Agreement in any respect; or (4) Contractor fails to provide Purchaser upon request with adequate assurance of future performance of the Agreement (including Contractor's failure to comply with Purchaser's instructions under paragraph (C) of this Article XII); or (5) Contractor becomes insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of Contractor or of any substantial part of Contractor's assets is appointed by any court or proceedings instituted under any provisions of the Federal Bankruptcy Code or any state insolvency law by or against Contractor are acquiesced in or are not dismissed within thirty (30) days or result in an adjudication in bankruptcy or insolvency; or (6) the materials, equipment, and/or services to be sold by Contractor hereunder or any part thereof shall in the reasonable opinion of Purchaser be unnecessarily delayed by Contractor, then Purchaser may cancel, without liability to Contractor, all or any part of the Agreement and/or pursue any further remedies available at law or in equity.

B. Termination for Convenience. Purchaser may terminate the Agreement, in whole or in part, at any time without cause and for its own convenience, by giving Contractor written notice. After receiving a notice of termination and except as otherwise directed by Purchaser, Contractor shall: (1) stop the Work; (2) place no further orders or subcontracts; and (3) take such action as may be necessary or as directed by Purchaser to protect and preserve all property related to the Work. Purchaser shall pay Contractor its actual, necessary, reasonable and verifiable expenses as a direct consequence of such termination; however, Purchaser shall be entitled to all the Work paid for by it or, at Purchaser's option, Contractor shall attempt to liquidate the same, and Purchaser shall be entitled to the benefits of any value received. Contractor shall furnish all necessary documentation to substantiate its expenses to Purchaser's satisfaction. Contractor shall make every reasonable effort to mitigate costs. Purchaser shall not be liable for lost profit, anticipated profit or unabsorbed indirect costs or overhead. Purchaser's liability for termination expenses shall not, in any event, exceed the unpaid balance of the contract price. The compensation described in this paragraph shall be Contractor's sole and exclusive compensation and remedy if the Agreement is terminated for convenience.

C. Remedies. In the event of termination by Purchaser for cause, Contractor shall, at the option of Purchaser, deliver to Purchaser the raw materials and work-in-process required in order to perform under the Agreement. Purchaser shall have the right, at its election and without prejudice to any other remedies, to continue and complete the Work or any part thereof, by contract or otherwise, deducting the cost of such completion from the

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contract price, or in the alternative paying to Contractor the reasonable costs of such raw materials and work-in-process. In the event of such termination, Purchaser shall not be required to obtain the lowest figure for completing the Work but may make such expenditures as in its sole judgment shall best accomplish such completion. The expense, including additional management and administrative services incurred by Purchaser for completing the Work, for remedying defective Work and damage done by Contractor and any other expenses sustained by Purchaser by reason of Contractor's default and/or failure to perform shall be charged to Contractor. Purchaser's rights and remedies set forth in this Article are cumulative and not exclusive, are in addition to any other rights and remedies provided at law, in equity, or under the Agreement, and they may be pursued separately or concurrently as Purchaser determines. Contractor shall, if requested to do so in such written notice of termination or a written notice thereafter given, immediately remove its employees, representatives, tools, equipment, and other property from Purchaser's Site. If Contractor should fail to effect such removal within a reasonable period, they may be removed by Purchaser at Contractor's expense. In any such event, Contractor shall be liable to Purchaser for any and all losses, damage and excess cost in completing said Work caused by its failure to carry out the Agreement. All of Purchaser's rights and remedies under the Agreement shall be cumulative and not exclusive. Upon a final determination by a court of competent jurisdiction that a termination pursuant to Article XII(A) was improper, the termination shall be deemed a termination for convenience pursuant to Article XII(B).

D. If Contractor fails or refuses to supply an adequate administrative and supervisory force, a sufficient complement of properly skilled workmen, or adequate construction equipment, tools or materials, or fails to prosecute the Work expeditiously and efficiently in accordance with the agreed upon Work schedule, then Purchaser may, without prejudice to any other of its rights or remedies, and by written notice to Contractor, direct Contractor to increase or supplement its working force and equipment and/or perform the Work on an overtime or multiple shift basis without added cost to Purchaser and to such an extent as to give reasonable assurance of compliance with the schedule of completion and the required quality of work.

ARTICLE XIII - CHANGES TO SCOPE OF WORK

Purchaser may at any time, by written notice, make changes altering, adding to, or reducing the scope of the Work, or changing the Specification, packing and shipping instructions, time and/or place of delivery, quantities, sequencing, or accelerating work under the Agreement. Contractor's performance of additional Work as related to the changes shall in no way be a basis of claims involving loss of efficiency on any Work performed or to be performed under the Agreement. Performance of extra Work shall not be a basis for schedule extensions unless such extensions are agreed upon at the time of award of the additional Work. Such changes shall be initiated by written order of Purchaser and Contractor shall submit the proposed cost or credit to Purchaser for any changes in the Work within fifteen (15) working days after receipt of the written order for Purchaser's approval. No change to the cost or schedule of the Work shall be binding upon Purchaser without Purchaser's written approval. Contractor shall be paid for any additional Work by an amount to be determined, at Purchaser's option, by (a) unit prices, (b) lump sums, or (c) other methods of reimbursement, in each case as designated in the change order and/or the attachments thereto or as subsequently agreed upon.

ARTICLE XIV - SUSPENSION

A. Right to Suspend. Purchaser may suspend Contractor's performance of the

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Work, in whole or in part, at any time without cause and for its own convenience, by giving Contractor written notice. After receiving a notice of suspension except as otherwise directed by Purchaser, Contractor shall: (1) stop the Work on the date and to the extent specified therein; (2) place no further orders or subcontracts except as may be necessary for completing such portions of the Work as have not been suspended; (3) suspend all orders and subcontracts to the extent that they relate to the portions of the Work suspended; and (4) take such action as may be necessary or as directed by Purchaser to protect and preserve all property related to the Work which is in Contractor's possession and any other items in which Purchaser has or may acquire an interest.

B. Deferral of Deliveries. Purchaser may defer delivery of the Work, at any time for its own convenience, by giving Contractor written notice. Contractor will adjust its manufacturing schedules consistent with Purchaser's deferral request. Materials and equipment on which delivery is deferred by Purchaser may be placed in storage by Contractor for Purchaser's account, and reasonable charges and direct expenses in connection therewith will be paid by Purchaser.

C. Adjustment of Price and Schedule. Suspension hereunder shall not affect the contract price or the period of performance, unless Contractor experiences a cost increase or time delay as a result of such suspension and notifies Purchaser in writing detailing such effect(s). Such notification shall be filed with Purchaser within thirty (30) days after such suspension is terminated or extended, and shall be accompanied by sufficient documentation to substantiate a cost increase or time delay, as the case may be. Any payments made by Purchaser as a result of postponement of performance shall be credited to payment of the contract price.

ARTICLE XV - COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS

A. During the performance of the Agreement, Contractor shall strictly comply with all federal, state and local laws, rules or regulations and executive orders applicable to the Work.

B. Without limiting the foregoing, and unless exempted under the rules, regulations and relevant orders (41 CFR Chapter 60) of the Secretary of Labor, in connection with the Work, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age or disability. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender, national origin, age or disability. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the U.S. Department of Labor setting forth the provisions of this nondiscrimination clause.

2. Contractor shall state, in all solicitations or advertisements for employees placed by or on its behalf, that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, age or disability.

3. Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement, contract or understanding, a notice to be provided by the U.S. Department of Labor, advising the labor union or workers' representative of Contractor's commitments under the following provisions, as amended from time to time:

a. Section 202 of Executive Order 11246 (Equal Opportunity);

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b. Executive Order 11701 (Employment of Veterans);
c. Executive Order 11758 (Employment of the Handicapped);
d. Executive Order 11141 (Employment Discrimination Because of Age);
e. Executive Order 11625 and Public Law 95-507 (Utilization of Disadvantaged Business Enterprises); and
f. Executive Order 13496 (Employee Rights Under the National Labor Relations Act),

and shall post copies thereof in conspicuous places available to employees and applicants for employment.

C. If this Agreement is a subcontract under a government contract or a federally-funded project, Contractor shall comply with subcontractor flowdown requirements under the Federal Acquisition Regulations (48 CFR Chapter 1), as amended from time to time, which are specified in supplemental terms to this Agreement.

D. Contractor shall comply with the Department of Commerce Export Administration Regulations ("EAR") in 15 CFR Chapter VII, subchapter C, including 15 CFR Section 734.2 which prohibits the export or release of controlled technology and/or software to foreign nationals within the United States who are not lawfully admitted to the United States for permanent residence. Contractor shall confirm that these regulations either do not apply to Contractor's activities under the terms of the Agreement or that Contractor has procedures to ensure compliance. If Contractor is directly or indirectly employing a foreign national not currently lawfully admitted to the United States for permanent residence to perform work under the Agreement, Contractor warrants to Purchaser that such employment does not violate the foregoing regulations.

E. Foreign Corrupt Practices Act ("FCPA"). The following provisions shall apply to Contractor (unless it is a foreign concern) if it performs or obtains any of the Work in a foreign country:

1. All payments to Contractor shall be by check or bank transfer only. No payment shall be in cash or by bearer instrument and no payment shall be made to any corporation or person other than Contractor. All payments due hereunder shall be made to Contractor at its principal place of business in the United States, even if Contractor performs or obtains the Work in a foreign country.

2. Contractor represents that it is familiar with the FCPA and its purposes; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.

3. Contractor represents that none of its partners, purchasers, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office. Contractor shall not use any part of its compensation for any purpose, and shall take no action, that would constitute a violation of any law of the United States (including the FCPA) or of any jurisdiction where it performs services or manufactures or sells goods. Purchaser represents that it does not desire and will not knowingly request any Work by Contractor that would or might constitute any such violation.

4. Purchaser may terminate the Agreement for default at any time, without any liability or obligation, if it believes, in good faith, that Contractor has violated this Article. Any action by Contractor which would or might constitute a violation of the FCPA, or a request for such action from Contractor's representative, shall result in immediate termination of the

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Contract for default. Should Contractor ever receive, directly or indirectly, from any Purchaser representative a request that Contractor believes will or might violate the FCPA, Contractor shall immediately notify Purchaser's general counsel.

5. Purchaser may disclose the existence and terms of the Agreement, including the compensation provisions, at any time, for any reason and to whomever Purchaser's general counsel determines has a legitimate need to know the same including, without limitation, the United States government, the government of any country where the Work is performed or obtained, and any regulatory agency with jurisdiction over Purchaser.

F. Contractor shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements, and revisions thereof or adopted pursuant thereto. If applicable, Contractor agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to insure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Contractor, of any subcontractor or of Purchaser.

G. Unless the Agreement otherwise provides, Contractor shall, at its own expense, obtain from appropriate governmental authorities all permits, inspections and licenses which are required for the Work and comply with all rules and regulations of insurance companies which have insured any of the Work.

H. Any costs, fines, penalties, awards, damages or other liabilities associated with any violations of this Article shall be borne and paid by Contractor.

I. Contractor acknowledges and agrees that its employees, if given access to FirstEnergy's (FirstEnergy Corp., its parent, subsidiaries and affiliates) Information and Control Systems, shall be required to sign a Network/Systems Access Agreement governing Contractor's and such employees' use of such systems. The Network/Systems Access Agreement requires that each person given access is given a background check, is either a US Citizen or holds a valid green card and shall comply with the FE IT Cyber Security Policy (available upon request.)

J. Contractor shall comply with all requirements of any governmental regulatory codes of conduct applicable to the work performed under the Agreement.

K. Contractor shall comply with all requirements of FirstEnergy's Code of Conduct (located at www.firstenergycorp.com) and any governmental regulatory codes of conduct applicable to the Work.

ARTICLE XVI - SET-OFF

Purchaser shall be entitled at all times to set-off any amount owing from Contractor to Purchaser or any affiliate of Purchaser against any amount payable by Purchaser hereunder, and in no event shall Purchaser be liable for interest.

ARTICLE XVII - LIMITATION OF LIABILITY/DAMAGES

Under no circumstances shall Purchaser, its parent, subsidiaries and affiliates, be liable for any anticipated profits or for incidental, indirect, punitive or consequential damages.

ARTICLE XVIII - ASSIGNMENT AND SUBCONTRACTS

A. Contractor may not assign any rights or claims, or delegate any duties under the Agreement, in whole or in part, without the prior written consent of Purchaser, which may be withheld at Purchaser's sole discretion. In the event of any assignment or delegation permitted hereunder, Contractor shall continue to be liable for the performance of its obligations hereunder.

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B. If Contractor proposes to subcontract any of the Work hereunder, it shall submit to Purchaser the name of each proposed Subcontractor(s) prior to engaging such Subcontractor, with the proposed scope of the Work to be undertaken and such information about the Subcontractor(s) as Purchaser may reasonably request. Purchaser may reject any and all Subcontractors at its absolute discretion. Contractor shall not be relieved of any responsibility or obligations under the Agreement by subcontracting any portion of the Work, whether or not such proposed subcontract is approved by Purchaser.

ARTICLE XIX - NON-WAIVER

The delay or failure of either party to assert or enforce in any instance strict performance of any of the terms of the Agreement or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.

ARTICLE XX - PROHIBITION OF PUBLICITY

Contractor shall not refer to the Agreement or reference Purchaser, its parent, subsidiaries and affiliates, directly or indirectly, in its advertising or promotional materials without the prior express written consent of Purchaser, such request considered on a case by case basis.

ARTICLE XXI - CONFIDENTIALITY

A. Contractor acknowledges that in the course of performing under the Agreement it may have access to and/or be in possession of Confidential Information of Purchaser. "Confidential Information" shall include scientific and technical information, formulas, devices, concepts, inventions, designs, drawings, methods, techniques, computer software, screens, user interfaces, system designs and documentation, marketing and commercial strategies, information concerning Purchaser's or any of its affiliates' employees, customers, or suppliers, processes, data concepts, and know-how, and unique combinations of separate items which individually may or may not be confidential, which information is not generally known to the public and either derives economic value, actual or potential, from not being generally known or has a character such that Purchaser or any of its affiliates has an interest in maintaining its secrecy. Contractor shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information to which it may have access hereunder, and shall not use Confidential Information for any purpose other than performance of the Work. Access to Confidential Information shall be restricted to Contractor's employees with a need to know such information in connection with the Work. Contractor shall return Data and Confidential Information to Purchaser upon completion of performance of the Agreement.

B. Contractor shall not use or disclose Confidential Information for any reason or purpose without the prior written consent of the Purchaser. Contractor may use Confidential Information for the sole purpose of the performance of the Agreement for the benefit of the Purchaser. Contractor will take all precautions and actions to prevent sale, transfer, sublicense, use or disclosure of Confidential Information to any third party.

C. The restrictions set forth in this Article XXI shall not apply to information which Contractor can establish by documentary evidence: (1) is or has become generally known to, or readily ascertainable by, the public without the fault or omission of the Contractor or its employees or agents; or (2) was already known to Contractor prior to the first disclosure of such information to Contractor by Purchaser; or (3) was received by Contractor without restrictions as to its use from a third party who is lawfully in possession and not restricted as to the use thereof; or (4) is required to be disclosed by law or by order of a court of competent jurisdiction; or (5)

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was independently developed by Contractor through persons who have not had, either directly or indirectly, access to or knowledge of similar information provided by Purchaser.

D. If Contractor is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, Civil Investigative Demand or similar process, or otherwise in compliance with applicable law) to disclose any Confidential Information supplied to Contractor in its course of dealings with Purchaser, Contractor shall provide Purchaser with prompt notice of such request(s) so that Purchaser may seek an appropriate protective order and shall itself use appropriate efforts to limit the disclosure and maintain confidentiality to the maximum extent possible.

E. Contractor shall incorporate the above provisions in all agreements with its Subcontractors, agents and assigns.

ARTICLE XXII - SEVERABILITY

If any portion of the Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

ARTICLE XXIII - FORCE MAJEURE

Neither party shall be liable to the other for any expenses, loss or damages resulting from delays, disruption, interferences, hindrances, impacts, or prevention of performance arising from causes beyond its reasonable control caused by fire, flood, accident, epidemic, strikes, civil commotion, governmental or military authority, insurrection, riots, embargoes or acts of God or public enemy. In the event of any delay, disruption, interference, hindrance, or impact arising by reason of any of the foregoing events, the time for performance shall be extended by a period of time equal to the time lost by reason for such delay. The affected party will notify the other party as soon as reasonably practical (but no later than within forty-eight (48) hours) of the affected party becoming aware of a force majeure occurrence as defined herein which will or has caused a delay, disruption, interference, hindrance, or impact. Within a reasonable period of time of such occurrence, the affected party will further define the precise cause or causes, the measures taken or to be taken to minimize, the time table by which the measures will be implemented, the duration of the delay, disruption, interference, hindrance, or impact, the extension of time for performance of the Agreement and documented evidence that supports the claim. The non-affected party will review the claim and advise the affected party in writing of the decision regarding the claim for extension of time for performance of the Agreement.

ARTICLE XXIV - SALES TAX

Taxes, if any, shall be shown separately on any bids or invoices sent to Purchaser. Direct Payment Permit Numbers authorizing purchase of tangible personal property without payment of the tax at the time of purchase have been issued by various states to Purchaser. The Direct Payment Permit Numbers/Sales Tax Exemptions by state are as follows:

Maryland

The Potomac Edison Company - Direct Pay Permit issued but unnumbered
Allegheny Energy Supply Company - Sales Tax Exemption Certificate is available upon request

In Maryland, Sales and Use Tax Regulations 03.06.01.32-2 and 03.06.01.19.C.(3) provide for tax-exempt purchase of materials used in a

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production activity by contractors performing real property construction, improvements, alterations and repairs. In order to qualify for tax exemption, the property must be used directly and predominantly in the production activity of generating electricity for sale. Contract bids should be submitted accordingly. The successful bidder will be issued a Maryland Sales and Use Tax Exemption Certificate upon request to permit tax-exempt purchase of qualifying materials.

Michigan - Sales Tax Exemption Certificate is available upon request

New Jersey - Jersey Central Power and Light Company - DP-210-485-010

Ohio

American Transmission Systems, Inc - 98-002721
FirstEnergy Generation Company - 98-002723
FirstEnergy Nuclear Operating Company - 98-002722
Ohio Edison Company - 98-001123
The Cleveland Electric Illuminating Company - 98-000312
The Toledo Edison Company - 98-001495

In Ohio, Direct Payment Permits do not apply to construction contracts under which the supplier is considered to be a consumer and liable for the tax on materials incorporated into a structure or improvement as provided in Section 5739.01 (B) Ohio Revised Code.

Pennsylvania

FirstEnergy Generation Company - 00398
FirstEnergy Nuclear Operating Company - 00399
Metropolitan Edison Company - 00135
Pennsylvania Electric Company - 00127
Pennsylvania Power Company - 00128
West Penn Power Company - 00290
Allegheny Energy Supply Company - Sales Tax Exemption Certificate is available upon request
Trans-Allegheny Interstate Line Company - Sales Tax Exemption Certificate is available upon request

Pennsylvania Direct Payment Permits do not apply to construction contracts under which a supplier is considered to be the consumer and liable for the tax on materials incorporated into the property of Pennsylvania companies. Pennsylvania Sales and Use Tax Regulations Sections 31.11 through 31.16 provide for tax-exempt purchase of materials by a supplier for those materials that will be incorporated into and become a part of the property of Pennsylvania companies. In order to qualify, the property must be directly used in the rendition of the Public Utility Service. Contract bids should be submitted accordingly. The successful bidder will be issued a properly executed "Certification" form upon request to permit tax-exempt purchase of qualifying materials.

West Virginia

Allegheny Energy Supply Company - 94-2-002482
Monongahela Power Company - 91-1-024150
PATH Allegheny Transmission Company - L-2000193792
The Potomac Edison Company - 91-1-086241
Trans-Allegheny Interstate Line Company - L-1375690752
West Penn Power Company - 91-1-064620

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In West Virginia, Direct Payment Permits will apply to contractors performing construction contracting services. West Virginia Sales and Use Tax Regulation Section 11-15-9-(b) (2), and Administrative Notice 2007-19, provide for tax exemption for services, machinery, supplies and materials directly used or consumed in the activities of generation/ production/ selling of electric power, provision of a public utility service, operation of a utility service/utility business or transmission of electricity by wires. Contract bids should be submitted accordingly. The successful bidder will be issued a WV Contractor Tax Exemption Instructions form upon request for items qualifying for tax exemption.

When Direct Payment Permits apply, Purchaser agrees to maintain adequate records of all purchases and pay tax on the taxable items directly to the Treasurer of each respective State.

Questions concerning Pennsylvania, New Jersey and Ohio sales taxes call General Taxes at (973) 401-8383. Questions concerning Maryland, Virginia and West Virginia sales taxes call General Taxes at (724) 838-6490.

ARTICLE XXV - GOVERNING LAW

Any and all matters of dispute between the parties, whether arising from the Agreement itself, or arising from alleged extra-contractual facts prior to, during or subsequent to formation of the Agreement, shall be governed, construed, and enforced in accordance with the laws of the State of Ohio regardless of the theory upon which such matter is asserted. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Any legal suit, action, or proceeding to collect payment due hereunder from Purchaser, or otherwise arising out of or relating to the Agreement, may be (and, if against Purchaser, must exclusively be) instituted in a State or Federal Court in the County of Summit, State of Ohio, and Contractor waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

ARTICLE XXVI - INTERPRETATION

The following principles of interpretation shall apply to the Agreement: (i) paragraph headings and captions are inserted for convenience only and shall not be considered in construing intent; (ii) neither Purchaser nor Contractor shall be considered to be the party responsible for the drafting of any particular provision of the Agreement; (iii) the words "hereof," "herein," "hereunder," and words of similar import shall refer to the Agreement as a whole and not to any particular provision hereof; (iv) the word "including" means "including, but not limited to" and shall be interpreted as broadly as possible; (v) words in the singular include the plural and vice versa; (vi) all references to "days" shall be calendar days (and not merely business days, unless the Agreement so states); (vii) any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the parties' intent to the maximum extent permitted by applicable legal requirements; and (viii) if any conflict arises between a term defined in this document and a term (defined or otherwise) contained in another document comprising a part of

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the Agreement, the conflict shall be resolved in favor of the more specific defined term unless the context clearly indicates otherwise or such a resolution would deny or dilute Purchaser's rights or benefits under the Agreement.

ARTICLE XXVII - EXECUTION AND COUNTERPARTS

The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

LABOR REV 26 (01.22.13)

Veterans Rule: "This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans."

Disability Rule: "This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities."

FirstEnergy Energy Delivery Contractor Safety Requirements

CONTRACTOR RESPONSIBILITIES

Contractors and associated Subcontractors are responsible for their own safety. Each contractor must have their own written safety program and must follow it while performing work for FirstEnergy (FE). Each contractor must follow all of the requirements of this Contractor Safety Requirements. This Contractor Safety Requirements takes precedence over the contractors written safety program in any area where there may be a conflict unless negotiated differently. Any conflicts between these Requirements and the contractor's own written program must be brought to the attention of FE.

The contractor will at all times be solely responsible for all means, methods, techniques and procedures for the work specified in the contract. The contractor is responsible for all acts/omissions of all their employees, subcontractors and agents performing any of the contracted work. The contractor will ensure that their employees are aware of the requirements contained in this document. Lastly, the contractor will, at all times, maintain appropriate discipline among its employees and will not employ any person unfit or unqualified in that portion of the contracted work assigned to them.

The contractor has the authority and responsibility to control and/or correct all safety and health hazards associated with the contracted work (refer to Section 4 for further information). If the contractor becomes aware of a hazard which the contractor contends was created or caused by FE, the contractor must notify the designated FE contact person immediately in the case of an imminent hazard, or as soon as possible in all other cases.

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SAFETY AND HEALTH OBLIGATIONS

1. Designation of Safety Supervisor

The contractor must designate a responsible member of its organization at the job site, whose duty would include safety & health compliance and the prevention of accidents. The name and position of any person designated must be reported in writing to the appropriate FE safety representative or other designated FE representative.

2. General Site Rules and Housekeeping

A Portable ladders are to be tied or lashed to prevent the ladder from slipping and must have non-slip bases. Metal and any conductive ladders will not be permitted for use around energized conductors or equipment.

B Hoses and electrical cords must be barricaded/protected or run overhead to eliminate tripping hazards or damage by heavy equipment.

C Temporary floor openings are to be barricaded and flagged as required by OSHA regulations.

D Compressed air must not be used for cleaning clothing or shoes.

E All equipment used in proximity to overhead lines must be properly grounded. Work near overhead lines must be communicated to the FE safety representative's attention.

F Rigging and hoisting of material or equipment must be done in a manner to ensure safety to personnel and existing equipment in the hoisting area.

G All posted signs must be observed.

H Fire extinguisher, fire hoses and other fire fighting equipment must not be moved from their designated locations, unless supporting hot work applications or responding to a fire emergency.

I If required to work in proximity to exposed energized switches, cables and overhead lines, the contracted employees must be electrically qualified to perform work and must be aware of the hazards associated with working on energized components/equipment.

3. Personal Protective Equipment

The contractor must ensure that all its employees utilize personal protective equipment required by the applicable Occupational Safety and Health Administration (OSHA) laws and regulations. FE will not provide safety equipment or personal protective equipment (PPE) (i.e. dielectric overshoes and rubber gloves) to contracted personnel.

A. Hard hats, safety glasses, hearing protection and footwear with industrial sole(s) and safety toes where appropriate, must be worn at all times.

B. When working at a work site where energized or grounded electrical facilities are present and there is a potential exposure to electrical contact or step/touch potential, the contractor must protect their employees from this hazard through the use of PPE or other protective means.

C. Contractor employees that are exposed to hazards associated with electrical arcs are prohibited from wearing clothing made all or in part from synthetic fabrics unless they are flame retardant (FR) treated or inherently flame resistant.

D. FR clothing must be worn by employees whose daily assignment may involve working on or in the vicinity of energized conductors or equipment.

E. OSHA compliance will include, but not be limited to, the following:

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(1) Conduct a hazard assessment prior to the start of the job to determine what, if any, personal protective equipment is needed for the contracted employees.

(2) Conduct exposure air sampling, if required, as per OSHA regulations.

(a) If industrial hygiene sampling is required, the contractor will inform the FE safety representative, in writing, of the need to perform monitoring-as well as identify the personnel to be monitored and the individual (or subcontractor) that will be performing the sample collection and/or analysis.

(b) FE reserves the right to reject any/all parties involved with the sample collection and/or analysis.

(c) The contractor will supply FE with the results of all exposure monitoring collected on FE property.

All non-electrically qualified contractors must maintain a minimum distance of at least 10 feet from exposed energized equipment/components. Contracted personnel who are electrically qualified and have been issued appropriately rated PPE are required to maintain the following safe minimum working distances when working in proximity to energized equipment/components.

Alternating Current Voltage Minimum Approach Distance
Range (Phase to Phase) and Clear Hot Stick Distance
(Phase to Ground Exposure)

50 to 300 V Avoid Contact

301 to 750 V 1' 0"

751 V to 15 kV 2' 2"

15.1 to 36 kV 2' 7"

36.1 to 46 kV 2' 9"

46.1 to 72.5 kV 3' 3"

72.6 to 121 kV 3' 4"

121.1 to 145 kV 3' 10"

145.1 to 169 kV 4' 3"

169.1 to 242 kV 5' 8"

242.1 to 362 kV 9' 2"

362.1 to 550 kV 11' 10"

550.1 to 800 kV 15' 11"

NOTE: 'Electrical Qualified' personnel are defined as individuals who can identify the following:

- Energized vs. deenergized equipment;
- The maximum voltage of the specific electrical system;
- The minimum approach distance; and
- The appropriate type of personal protective equipment that is required.

4. Emergencies

The contractor must be aware of and comply with any emergency action plans for the facility where contracted work is performed.

In the event of an emergency that is potentially threatening to human life (i.e., contracted personnel, company employee or general public) or could compromise the safety of the job site/adjoining property, the contractor is permitted to act at its discretion to prevent personal injury or property

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loss. Reimbursement for any costs incurred by the contractor due to emergency work will be made at the discretion of FE.

5. First Aid

The contractor must provide its own first aid supplies, emergency response equipment and prompt medical attention in case of serious injury. Provisions must be made and in place prior to the commencement of the work. The contractor is responsible for ensuring that employees trained in first aid are available on each shift.

6. FirstEnergy Operating Companies Equipment and Utilities

The contractor is prohibited from starting, stopping or otherwise operating FE owned or leased equipment and utilities, unless specifically authorized to do so in writing. The contractor cannot open or close any valves, breakers or switches, enter into any equipment, or cut into any conduit or conductors without first obtaining permission from the proper FE contact. (Refer to Section 7 for further information).

7. Deenergized Lines and Equipment for Worker Protection

"Electric Power Generation Transmission and Distribution (29 CFR 1910.269) Work:

The contractor will be required to comply with the 'FirstEnergy Regional Operations' Program for Deenergized Lines and Equipment for Worker Protection' (Manual of Operations) for work that affects the operation and maintenance of electric power control, transformation, transmission or distribution lines and equipment. The contractor will obtain a clearance control through the designated FE representative, prior to the commencement of the contracted work.

Any piece of equipment that is locked out/tagged out of service must never be placed in service until it has been released by the person(s)-in-charge. The designated FE representative will obtain (and hold) a clearance release for the contractor.

"Premise Wire Work at Service Centers:

When performing maintenance work at a FE service center that does not fall under the Electric Power Generation Transmission and Distribution Standard (29 CFR 190.269), the contractor can use their own Facility Energy Control program (lockout/tag out) to perform work. FE reserves the right to have the contractor use FE's Facility Energy Control program whenever FE deems it necessary. In situations where two or more contractors are performing premise wire electrical work at the same time on the same facility, FE will indicate which Facility Energy Control program will be used by all parties involved.

8. Excavation and Trenching

Any excavation/trenching activities and building demolition operations must comply with applicable federal, state and local laws or regulations pertaining to those activities. This includes trenches dug for access to utility piping, plumbing and power lines. The contractor will obtain all appropriate permits prior to beginning work on-site. Furthermore, the contractor will agree to comply with OSHA regulations that include, but are not limited to, the following:

- Using appropriate shoring or sloping when required;
- Having excavations/shoring inspected by a trained competent person;
- Hazardous atmospheric testing where needed; and
- Providing appropriate means of egress.

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9. Scaffolding

Any scaffolding must be erected and maintained in accordance with applicable federal, state and local laws or regulations pertaining to those activities. Contractor supervision will be responsible to ensure that all contracted employees who have access to the scaffold structure are properly trained/qualified as either a competent person, erector/dismantler or user. Scaffolding will be inspected by a 'competent person' at the beginning of each shift. All scaffolding will utilize a guardrail system and toe boards. In the event that a guardrail system cannot be erected, fall protection must be issued/utilized as per OSHA regulations. All scaffolding that is constructed will meet the design and construction requirements of 29 CFR 1926 subpart L. The contractor will supply all scaffold inspection documents to the designated FE representative.

10. Asbestos

Unless otherwise specified, contractors must presume all insulating materials (i.e., pipe insulation, pipe fittings, etc.) and building materials (i.e., floor tile, roofing, drywall and joint compound, plaster, gaskets, old wire insulation, transit board, etc.) must be considered to contain asbestos. When supporting asbestos abatement projects, the contractor will be responsible for providing the appropriate training and PPE for their employees, as well as licenses and notification(s) for applicable regulatory agencies. Work practices must comply with applicable OSHA asbestos standards as well as any applicable disposal regulations. The contractor is also responsible for the disposal or decontamination of all PPE and any other items that become contaminated from asbestos fibers. Furthermore, unless otherwise negotiated under the terms of the applicable contract, the use of FE change facilities is prohibited.

The contractor will be notified of the presence of any known or suspected asbestos-containing materials in the contractor's proposed work areas. Only a contractor with the required OSHA training, certification and applicable permits for asbestos abatement may handle/remove these materials. All other contractors are prohibited from working on or removing asbestos-containing materials.

The contractor is responsible for conducting exposure monitoring, as outline in the general industry and construction asbestos standards, to determine employee exposure and identify the appropriate level of PPE required.

In the event suspect asbestos-containing material is inadvertently disturbed during a constructions project, work shall immediately stop and the FE project Representative shall be notified. Work shall not commence until approval is granted by FE.

11. Lead

Prior to work being performed on potential lead containing materials, the contractor must test the material to determine the lead content. If possible, all lead containing materials should be removed prior to the start of work by a trained and where applicable licensed contractor. If the work to be performed may expose employees to lead, then proper containment and engineering control measures must be implemented. Work practices must comply with applicable OSHA lead standards as well as any applicable disposal regulations. The contractor is also responsible for the disposal or decontamination of all PPE, or any other items that become contaminated from

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lead dust or fumes. Furthermore, unless otherwise negotiated under the terms of the applicable contract, the use of FE change facilities is prohibited. (Refer to Section 3 for further information).

The contractor is responsible for conducting air monitoring, as outline in the general industry and construction lead standards, to determine employee exposure and identify the appropriate level of PPE required.

12.Hexavalent Chromium

If the contractor will be performing welding operations or any activity that will create a hexavalent chromium hazard, the contractor is expected to notify the FE safety representative and take all appropriate steps to comply with OSHA's general industry and construction Hexavalent Chromium Regulations.

The contractor is responsible for ensuring that only employees with the required OSHA training enter and perform work in regulated work area. Contractors working in regulated work areas will be responsible for providing and maintaining step off exit areas from these regulated areas.

Disposal of all protective coveralls, PPE, or any other items that become contaminated with hexavalent chromium, is the responsibility of the contractor and must be properly disposed of in accordance with applicable federal, state and local regulations. If the contractor is working at an Energy Delivery facility, use of the facility's change area and shower is prohibited, unless a specific agreement to do so is in place.

Portland Cement Applications:

Contractors performing work using Portland Cement must follow OSHA's compliance directive for the Chromium (VI) standard (appendix C-1). The Contractor must ensure that items identified in the appendix are followed such as:

- Proper PPE is used such as boots, gloves, protective coveralls, respirator (if needed).
- Washing facilities are close by.
- The 8-hour TWA exposure to Portland Cement dust or any other dust created at the job site does not exceed the PEL of 15 mg/m3 for total dust without workers being in respiratory protection.
- MSDS(s) and labels for Portland Cement are maintained and made available. Refer to Section 24 for further information.
- Employees used by the contractor are properly trained to the hazards associated with exposure to Portland Cement, the use of PPE and proper hygiene practices. Refer to Section 18 for further information.

13.Hot Work (Welding, Cutting, Grinding, Brazing)

The contractor is prohibited from welding, burning, cutting, brazing or performing other "Hot Work" without prior authorization from FE management or designated representative. All Hot Work must comply with state and federal standards for these work activities, including those standards pertaining to hot work permits and safe handling of compressed gases. At a minimum, the program must comply with the following provisions:

A. Contractors are responsible for the implementation of a Hot Work permit procedure. This Hot Work permit procedure must identify the necessary precautions taken to prevent fires resulting from open flame operations (i.e. welding cutting, grinding, brazing).

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- B. The contractor will ensure that there are sufficient numbers of fire extinguishers, of the proper type, in the work area.
- C. The contractor must focus on the fire hazards associated with their work. It may be necessary to post a "fire watch," depending on the nature and location of work.
- D. The contractor will provide protection to prevent welding and burning sparks from falling below the work level. Fire retardant material must be used for this purpose.
- E. The contractor will screen or shield welding activities to prevent welding flash injuries to other personnel.
- F. Storage area for oxygen and acetylene tanks must be separated by 20 feet or by a non-combustible barrier at least 5 feet in height. Cylinder must be secured at all times and capped when not in use.
- G. Empty cylinders must be removed from the work area to the designated storage area.
- H. The contractor is responsible for ensuring that only properly trained employees will perform such work and that all workers will have on the proper personnel protective equipment.

14. Powered Industrial Trucks and Other Vehicles

The contractor's employees who drive vehicles or forklifts, or who operate heavy equipment on FE operating company project sites, must have a valid driver's license.. The contractor must retain documentation of appropriate training in accordance with state and federal OSHA standards, Department of Transportation and Department of Motor Vehicles codes and standards. The contractor is responsible to meet all OSHA regulation pertaining to powered industrial trucks, mechanized equipment, motor vehicles, cranes derricks and hoists which includes but is not limited to 1926 subparts N and O.

15. Crane and Derricks

Contractor personnel who are required to operate construction equipment (i.e., articulating/knuckle boom cranes, mobile cranes, etc.) that can hoist, lower and horizontally move a suspended load, must be certified/qualified by an accredited crane operator testing organization. Certifications (i.e. National Commission for the Certification of Crane Operators, (NCCCO) or Crane Institute of America Certification (CIC)) must be provided to FE designated representative prior to the start of work. Once authorized to operate the equipment on FE facilities (or on the behalf of the Company within the general public), the contracted company is required to comply with all state and federal laws and regulations that are applicable to the use/maintenance of the construction equipment (i.e., providing a 'qualified' signal person and/or a 'qualified' rigger, a crane operator license (if applicable), inspecting hoisting components, inspection documentation, etc).

16. Vehicle Delivery Requirements for Outside Carriers

All drivers from carriers making pick ups or deliveries are required to perform the following items when arriving at a FE facility:

- When delivering/picking-up material at FE locations, all drivers are required to communicate with an FE employee or FE authorized representative. The FE employee or FE authorized representative will make the determination whether a job briefing with the driver is required.
- All drivers are required to engage the parking brake, chock the wheels and/or use dock locks where available.
- All drivers are required to open the truck or trailer doors, remove gates

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and remove the rear load bar before loading or unloading.

-If needed, drivers should seek the assistance of a FE employee when backing their vehicle.

-To avoid inadvertent vehicle operation, the driver should remain outside the vehicle in a safe location where he/she is visible to the person performing the unloading/loading.

-It is the responsibility of the carrier/ driver to ensure their vehicle is in good mechanical repair. In the event the carrier's vehicle/equipment develops a fuel or oil leak, it must be identified and contained immediately by a trained employee.

-No vehicle having an obstructed view to the rear may be operated at a FE off-highway jobsite where an employee could be exposed to hazards created by the moving vehicle, unless the vehicle is equipped with a reverse signal alarm, audible above the surrounding noise level or the vehicle is backed under the direction of a designated person.

17. Written Safe Work Procedures

The contractor must have in writing a series of safe work practices, procedures and programs pertinent to the work being done. FE designated representative is to be provided a copy of these written safe work practices, procedures and programs prior to working on or at FE facilities. If upon review FE designated representative deems it not to be in compliance with appropriate OSHA regulations, the parties involved must resolve issues prior to the commencement of work.

18. Employee Training and Qualifications

The contractor will provide only properly trained and qualified personnel to perform work under the Contractor Agreement. The contractor has the authority and responsibility to train the contractor's employees with regard to general and work-specific hazards and safe practices. The contractor must certify that all of its employees, subcontractors and vendors, have been fully informed of tasks and specific hazards and safety requirements before beginning work on-site.

19. Incident Reporting

The contractor will immediately notify FE management or designated representative of any occupational injury or illness, employee exposure to hazardous substances, vehicle accidents, property damage, fires, environmental spills or releases, or "near misses." The contractor will provide a written incident report to the FE management or designated representative within 24 hours of any such occurrence. FE reserves the right to review the contractor's incident investigation and/or perform FE's own investigation, for the sole purpose of verifying facts, protecting FE personnel and property, and limiting FE liability.

20. Fall Protection

The contractor is responsible for providing suitable fall protection to any of its employees on a walking or working surface that is 6 feet or more above a lower level or 4 feet or more for work on poles, towers and similar structures. Fall protection must be used when working 4 feet or more above a lower level on top of transformers or any conductor supporting structures. Fall protection must be worn when performing work in aerial devices. All contract employees must be trained in fall protection before using fall protection equipment. The contractor is responsible for determining suitable anchor points for fall protection devices.

21. Substations

All contractors assigned to work in substations must be "qualified"

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employees. Qualified employees are those employees that have been trained in the hazards associated with the construction and operation of electric power generation, transmission or distribution equipment. (See 29 CFR 1910.269). Substation equipment, busses and lines are to be considered energized until properly de-energized, grounded and tagged out. All substation gates must be closed and locked if the contractor cannot maintain visual contact with the gate. OSHA minimum working distances must be maintained by the contractor at all times unless qualified and wearing the proper PPE to get closer than the required minimum approach distances. (See Section 3.E.)

22. Confined Spaces and Enclosed Spaces

"Confined Spaces:

The contractor must have a permit-required confined space program in place for the protection of its employees from the hazards associated with the entry into confined spaces. Contractors are required to perform the following activities:

- o Obtain any available information regarding confined space hazards and entry operations from the host employer (i.e., FE or designated representative).

- o Coordinate entry operations with the host employer, when both host employer personnel and contractor personnel will be working in or near confined spaces.

- o Inform the host employer of the confined space program that the contractor will follow and of any hazards confronted or created in permit spaces, either through a debriefing or during the entry operation.

FE reserves the right to require the contractor to follow FE's Confined Space Program. If FE decides to require the contractor to follow FirstEnergy's Confined Space Program, a copy of the FirstEnergy Confined Space program will be given to the Contractor. An agreement to train contractor employees to FirstEnergy Confined Space program must be in place, with training completed, prior to the commencement of work.

"Enclosed Spaces:

For entries into spaces that meet the OSHA definition of "enclosed spaces," the contractor must have an enclosed space entry procedure. The contractor will be responsible to determine if conditions allow for the entry of a confined space as an enclosed space as specified in 29 CFR 1910.269 or if conditions require the confined space to be upgraded to a permit required confined space. Atmospheric testing prior to entry and continued monitoring will be the responsibility of the contractor. The contractor must supply their own rescue equipment and equipment for the testing of air prior to entry.

23. Permits, Licenses and Inspections

The contractor will secure and pay for all required licenses, permits and inspections necessary for performance and completion of the work. Within 5 working days of receiving such documents, the contractor will deliver to FE or its designated representative copies of all permits, written approvals, licenses and inspections.

24. General Rules for Hazardous Materials and Equipment

When the use of hazardous materials as defined by the OSHA Hazardous Communication Standard (HAZCOM) 29CFR 1910.1200 or equipment is necessary for the work being performed, the contractor must exercise the highest care and must perform such activities under the supervision of properly qualified personnel. All applicable laws, rules, regulations and ordinances must be followed. The contractor is responsible to comply with the HAZCOM Standard.

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A copy of all Material Data Safety Sheets (MSDS) must be given to the FE designated representative when a hazardous material is brought on site. It is the contractor's responsibility to also maintain a MSDS file of all hazardous substances and chemicals. Where and when a hazardous material will be used must be communicated to the FE operating company's site representative or designated representative, prior to commencing work.

For work performed at FE's Pennsylvania locations, the contractor will comply with all requirements of the Pennsylvania Right to Know Act, including but not limited to, the labeling of containers, proper handling of applicable materials, proper training and protection of employees and others and the securing, and implementing of MSDS(s).

The contractor will be responsible for removing and properly disposing of all empty, partially full or full containers of chemicals or chemical substances as part of its demobilization. All products and materials brought on site by a contractor must be removed by that contractor upon its departure. Do not put chemical containers into company trash containers. Failure to adhere to this provision will result in FE disposing of the same and recovering the costs from the contractor. Also, all appropriate regulatory agencies will be notified of any non-compliance with any applicable regulations.

Explosives of any description are not permitted to be stored on the Project Site. If the contractor wishes to use explosives of any description, the contractor must first provide written notice to the FE representative and obtain written approval of all appropriate authorities having jurisdiction over the use of such explosives.

25.Fire Extinguishers and Fire Watch

The contractor will work with the FE safety representative to ensure that there are sufficient numbers of fire extinguishers, of the proper type, in the work area. The contractor will be responsible for providing a fire watch for periods during which its personnel may be engaged in activities constituting a fire hazard or as otherwise required by law. Prior to engaging in any activities that could ignite a fire; the contractor must ensure that all flammable material has been cleared from the affected area. See section 13 on Hot Work.

26.Compliance Audits

Any contractor performing work at a FE facility may be subject to compliance audits, which includes safety as well as all other compliance documentation mentioned in this document, whether announced or unannounced, at FE's discretion.

SECURITY AND FACILITY ACCESS

The contractor will comply with FE security and access procedures for entry onto a FE operating company controlled property, worksite or facility. The contractor's employees are authorized to enter only those work areas and structures specific to its contractual scope of the contracted work. Site specific security requirements will be distributed and reviewed with the contractor prior to mobilization.

A visitor is defined as any person not covered by contractual agreements with FE. Visitors may include vendors, tour groups or guests of the

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Contractor's management. All visitors to FE project sites or facilities must have prior authorization from FE. Visitors are prohibited from areas where contact with hazardous substances or materials are possible and are also prohibited from entering any area of the work site that requires PPE, respirators, specialized medical monitoring or safety training.

The contractor will immediately notify FE management or its designated representative of any regulatory agency inspectors or compliance personnel who request information about on-site activities or who request entry to work site. This includes personnel from city, county, state or federal government agencies. Regulatory and government personnel must provide appropriate identification prior to entering the work site.

-Prohibited Acts

oThe contractor's employees and subcontractors are prohibited from bringing firearms, knives and weapons of any kind into a FE location or facility, unless specifically authorized to do so in written contractual documents.

oNo one under the influence of any narcotics, drugs, controlled substances or alcoholic beverages is permitted on FE property or permitted to work on FE equipment.

oThe illegal use, sale or possession of narcotics, drugs, controlled substances or alcoholic beverages while on the job is strictly prohibited.

oContractor's employees and subcontractors may smoke only as permitted by state or local law and in designated areas.

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Supplier or Contractor to execute this order and return a copy to the appropriate address below.

The Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

FirstEnergy Service Company (A-GO-09)
76 South Main Street
Akron, Ohio 44308-1890
Attn: Justin Bahil
Fax: 330-245-5337
Email: jbahil@firstenergycorp.com

Supplier or Contractor to retain a copy for Supplier's/Contractor's records.

Supplier or Contractor acknowledges receipt of and agreement to this writing and the terms contained herein and in the attached terms and conditions.

Name: _____ Date: _____
(Authorized Supplier/Contractor Signature)

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(Print) Name: _____ Title: _____

Name: _____ Date: _____
(Authorized Purchasing Representative Signature)

(Print) Name: _____ Title: _____

SUB-CONTRACTOR AGREEMENT

This agreement is entered into this 16th day of MAY, 2016, by and between, Spring Creek Acquisitions LLC, a Limited Liability Company of Caddo County, State of Oklahoma hereafter referred to as Contractor, and Linda S. Ewing of Washington, PA, hereafter referred to as Sub-Contractor, Witnesseth:

Whereas, Contractor has entered into an agreement with Spring Creek Acquisitions, LLC for the acquisition of Right of Way, in the State of Ohio, for the OHIO/Penn project.

Whereas, Sub-Contractor is a self-employed-independent contractor engaged in the business of acquiring Rights of Way throughout the United States of America, and

Whereas, Contractor desires to sub-contract the acquisition of said right of way,

Now, therefore, the parties hereto agree as follows:

1. Sub-Contractor agrees to act as (supervisor/lead agent, agent, or document specialist) for the above project.
2. Contractor shall assign to such right of way acquisition he shall deem necessary for a successful completion of the project.
3. Sub-Contractor shall provide and furnish his own transportation, telephone, copy equipment, computer, office supplies, office equipment, and related equipment necessary to fulfill the terms of his Sub-Contract Agreement.
4. Sub-Contractor shall furnish proof to Contractor of automobile liability insurance in the amount of \$1,000,000.00.
5. Sub-Contractor agrees to perform the acquisition of right of way within the time designated by Contractor.
6. Contractor agrees to pay Sub-Contractor for such work at the rate of \$305.00_ per day for 5/6_ days per week.
7. Contractor shall pay the amount of \$75.00 per month for cell phone usage.
8. Sub-Contractor shall receive \$_130.00_ per day for per diem for every day Sub-Contractor is away from home.
9. Contractor shall pay mileage at the rate approved by the Internal Revenue Service code.
10. Sub-Contractor agrees to pay all taxes and withholding of every kind required by law.
11. Contractor shall pay Sub-Contractor on or shortly after the 1st of every month after reviewing Sub-Contractors invoices.

Exhibit B

12. Sub-Contractor shall maintain confidential records of all work performed and upon completion of the work return to Contractor all paper files, computer files, and records of work performed. Sub-Contractor shall keep all project related information confidential for the duration of the project.
13. The term of this agreement is for the time granted to Contractor for acquisition of such right of way. However, either party to this agreement shall have the right to terminate said agreement at any time. Upon termination of this agreement all sums due and owing shall be paid after final invoice has been submitted by sub contractor and reviewed by SCA management and forwarded and approved by Client project management.
14. Sub-Contractor shall work such times and in such a manner as he should determine necessary to complete the project within the time required.
15. In the event Sub-Contractor terminates this agreement prior to project completion he/she shall reimburse Contractor for any expenses, costs, or penalties incurred from wrong doings during said project that may be required under the terms of Contractor's Contract.
16. Sub-Contractor agrees to execute for Contractor an affidavit of exempt Status which is the Worker's Compensation Act.

Witnesseth our hands this day and year found above within,

By: Spring Creek Acquisitions, LLC
Manager

Sub-Contractor

Linda S. Ewing
Name

71 Oak Hill Dr, Washington, PA 15301
Address

724-263-6716
Telephone

189-46-4365
SS# or Federal EIN#

EXEMPT STATUS FACT SHEET

An independent contractor is defined by law as one who engages to perform certain services for another, according to his own manner, method, time from control and direction of his contractor in all matters connected with the performance of the service, except as to the result or product of the work.

Below are statements to help you decide if you are an independent contractor. No one statement is controlling, and your status is based on all the facts in your situation. If a statement describes your situation, then check the box. If at least six of the statements below do not describe your business, you should not sign the attached Affidavit of Exempt Status Under the Workers' Compensation Act.

- ☒ 1. The nature of the contract between you and the contractor shows you are independent from the contractor. For example: Is there a written contract where you agree that you are an independent contractor? Are you a corporation or limited liability company? Do you maintain commercial general liability insurance or other business insurance?
- ☒ 2. The contractor exercises very little control over your work. For example: By the agreement, can the contractor exercise control on the details of the work or your independence? Do you exercise control over most of the details of the work? Do you create plans or specifications for the job? Do you set your own work hours?
- ☒ 3. You are engaged in a distinct occupation or business for others. For example: Do you work for companies or individuals other than the Contractor? Do you work for competitors of the Contractor? Does your business have a logo or uniform?
- ☒ 4. Your job is the kind of occupation where the work is usually performed by a specialist without supervision, and not under the direction of the contractor. For example: Is your work supervised by the Contractor?
- ☒ 5. Your occupation requires special skills, license, education or training.
- ☒ 6. The contractor does not supply the things needed to perform your job such as the tools and the place of work. For example: Do you supply any of the materials or tools for the work? Do you operate a vehicle owned by the contractor? Was the work performed at your business or the contractor's business location or jobsite? Do you wear a uniform supplied by the contractor?
- ☒ 7. The length of the job and how long you have worked for the Contractor does not show that you are really an employee. For example: Is this a one-time job, or will you be doing this for the contractor regularly?
- ☒ 8. You are paid as a separate contractor, not as an employee. For example: Do you invoice the Contractor for your services? Are you paid by the job? Do you file a federal income tax return for your business? Do you expect to receive an IRS Form 1099 from the Contractor? Does the Contractor pay your expenses?
- ☒ 9. Your work is not the regular business of the employer. For example: Is your work customarily done in the Contractor's line of business or as part of the Contractor's daily work? Have you ever been an employee of the Contractor? Do you work with other people hired by the Contractor on the work you perform?
- ☒ 10. You do not consider yourself an employee of the contractor. For example: Will the Contractor withhold taxes or monies from your payment? Have you ever been an employee of the Contractor? Have you or your employees ever filed an insurance claim against the Contractor?
- ☒ 11. You do not have the right to terminate the relationship without liability. For example: If you quit before the job is finished, is there a penalty?

Based upon these factors, do you believe that you are an independent contractor with exempt status?

YES
(WRITE YES OR NO)

Signature Sandra Kurt
(INDEPENDENT CONTRACTOR/EXECUTOR)

Note: Employers who knowingly and willfully require an employee or subcontractor to execute an affidavit when the employer knows that the employee or subcontractor is required to be covered under a workers' compensation insurance policy shall be liable for a civil penalty of up to \$1,000.00 per offense. (36 OS §§924.5)

It is a crime to falsify the information on this form.

Edition 070106

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January 11, 2018

W. Eric Baisden
Benesch Attorneys at Law
200 Public Square, Suite 2300
Cleveland, OH 44114-2378

In re: FirstEnergy Corp., Contract No. 46102601

Dear Mr. Baisden:

I am responding to your letter dated January 8, 2018, addressed to Mr. Shawn Winchester, Manager of Spring Creek Acquisitions, LLC. I would first state that Linda Ewing was not an employee of Spring Creek. Please find enclosed a copy the sub-contractor agreement between Spring Creek and Linda Ewing which identifies her as a "self employed, independent contractor" including a fact sheet executed by Linda Ewing in which she verifies that status. I hope that this information will be useful with regard to your ongoing litigation between FirstEnergy Corporation and Linda Ewing in the Pennsylvania Court.

Second, Mr. Winchester does not have sufficient information at this time to respond to your requests that he agree to indemnify FirstEnergy in this matter. Mr. Winchester and Spring Creek are certainly willing to cooperate and assist FirstEnergy in any reasonable way with regard to the defense of her claims.

Yours very truly,



David D. Duncan OBA# 2525
Attorney for Shawn Winchester

DDD:hf

Enclosures

Exhibit C